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THE TRIAL

OF THE

THREE SUSPENDED
TEACHERS

OF THE

DE WITT CLINTON HIGH SCHOOL

Published for

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A R A R E O F F E R .

Department of Education of the
City of New York.

In the Matter

of

The Charges of Conduct Unbecoming a Teacher, Preferred by Associate Superintendent TILDSLEY,

against

THOMAS MUFSON, A. HENRY SCHNEER and SAMUEL D. SCHMALHAUSEN, teachers in the DeWitt Clinton High School.

BEFORE THE COMMITTEE ON HIGH SCHOOLS AND TRAINING SCHOOLS, ROOM 704, HALL OF THE BOARD OF EDUCATION, FIFTY-NINTH STREET AND PARK AVENUE, NEW YORK CITY.

November 22nd, 1917, 3:00 P. M.

FIRST SESSION.

Present—JOHN WHALEN, Chairman.

E. L. WINTHROP,

Miss OLIVIA LEVENTRITZ,

Prof. F. H. GIDDINGS,

A. S. SOMERS,

J. GREENE,

Prof. F. W. ATKINSON.

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APPEARANCES:

CHARLES MCINTYRE, Esq., and WM. E. C. MAYER, Esq., Assistant Corporation Counsels, for the Board of Education.

HERBERT C. SMYTH, Esq., Attorney for Thomas Mufson, A. Henry Schneer and Samuel D. Schmalhausen, by R. WELLMAN, Esq., of Counsel.

President W. G. WILLCOX and Secretary A. E. PALMER, for the Board of Education.

Chairman Whalen: Thomas Mufson, A. Henry Schneer and Samel D. Schmalhausen have been directed to appear before this Committee for the purpose of trying charges preferred against them last Monday. Are they here?

Mr. Wellman: I understand that none of the gentlemen are here.

Mr. Schmalhausen: They are here now.

Mr. Wellman: Mr. Chairman, and gentlemen of the Committee—

Chairman Whalen: You are counsel for the defendants?

Mr. Wellman: I am appearing here solely as a messenger from Mr. Herbert C. Smyth, who has been retained as counsel for these three gentlemen. I have not been retained as counsel.

Chairman Whalen: You are associated with him?

Mr. Wellman: I am one of the assistants in the office, but I know nothing about this case, am not authorized to appear for these gentlemen, and have not been retained. I merely bear a letter from Mr. Smyth addressed to Mr. Whalen.

Chairman Whalen: Is Mr. Smyth their counsel?

Mr. Wellman: Mr. Smyth has been retained, was retained late Monday, and I shall be glad to read this letter to the entire Committee.

Chairman Whalen: You can state the sub-

stance of it, and make your request, whatever it is.

Mr. Wellman: Mr. Smyth states that he was retained late Monday night and asks that the hearing be adjourned to some time at the Committee's convenience, preferably the latter part of next week, on several grounds: That he has not had sufficient time to consult with his clients respecting the subject matter of the charges, which are rather detailed, and also he is at present engaged in the trial of the case of *Bauman v. Ostriche* before Mr. Justice Philbin and a jury in the Supreme Court, so that he is physically unable to be here.

He also states in this letter that most of his time out of court lately has been taken up with the preparation of the *Newsprint Paper Trust* case, in which he has been employed as Special United States Attorney on behalf of the Government, so that he has not had time to consult with these gentlemen, if he had otherwise been able to.

He closes: "Feeling convinced, as I do, that your Committee intends to afford these gentlemen a fair opportunity to present their case, I feel confident that you will immediately recognize the justice of this request."

This is the letter, Mr. Chairman.

These gentlemen have a letter of their own and I should like to read that, or they, as you please, Mr. Chairman.

Chairman Whalen: Is it to the same effect, Mr. Schmalhausen?

Mr. Schmalhausen: Yes, more or less. I should like to read it if you do not object.

Chairman Whalen: Let me see it.

Letter handed to Chairman Whalen.

Chairman Whalen: I have no objections to your reading it, except one of the statements is

not correct, because we have not shifted the dates at all.

Mr. Schmalhausen: Judging by the newspaper reports.

Chairman Whalen: We are not going to try anybody here on newspaper statements.

Mr. Wellman: I might add, Mr. Chairman, that I am rather overwhelmed at the number of people here whose convenience will be sacrificed by putting it over. It is entirely unavoidable; I did not foresee it.

Chairman Whalen: They are not here at our invitation. We did not invite anybody to come except the three men that are accused. Those are the only men we invited to come here.

Now, Mr. Schmalhausen.

Mr. Schmalhausen read the following letter:

“New York, November 22, 1917.

To the Honorable John Whalen,
Chairman of the Committee on High
Schools,
500 Park Avenue, New York City.

Dear Sir:

May we three suspended teachers from the DeWitt Clinton High School, A. Henry Schneer, Samuel Schmalhausen, Thomas Mufson, request you to consider our plea for an extension of time on the following grounds:

(a) By advice of counsel, we have been requested to ask for a postponement on the ground of insufficiency of time for adequate preparation of defense.

(b) The specific charges were put into our hands as late as Monday evening at nine-thirty. In a case involving so many

critical issues, justice demands an extension of time that we ourselves may properly arrange our notes and our material relevant to the cases in question.

(c) Your Committee and your counsel, judging by the newspapers, have shifted dates several times in the course of the week with the evident result that we have not had any reliable way of prefiguring how much time might elapse between a promised date and the actual date finally agreed upon.

(d) We are of the conviction that if the evidence in your possession is of such a nature as to conform to the laws of justice, no possible harm can be done to said evidence by a postponement of the bearing for a week or so. We assume that the demands of justice will be no less rigidly fulfilled a week or so later.

In view of these weighty considerations, we respectfully request you, as Chairman of the Committee on High Schools, to grant us the courtesy of an adjournment until counsel and we shall have had sufficient time for a proper presentation of our defense.

Very sincerely yours,
 (Sgd.) A. HENRY SCHNEER,
 SAMUEL SCHMALHAUSEN,
 THOMAS MUFSON."

Chairman Whalen: You read this letter in regard to number "c", "Your Committee and your counsel, judging by the newspapers, have shifted dates several times in the course of the week." That is not in your letter at all; you added that.

Mr. Schmalhausen: Yes.

Chairman Whalen: The Committee is of the

opinion that you should go to trial to-day as they are ready to hear the case. It would be of great inconvenience to some of the members of the Committee to postpone the trial.

Mr. Greene: I think they should have an adjournment.

Mr. Giddings: Mr. Chairman, I think they should have their adjournment. I think it will be for the interest of everybody, including the public, that they have the time for preparation that they request, it being understood that when the date is fixed they must be here and there must be no further postponement.

Mr. Somers: This suggestion removes me from the case, Mr. Chairman, because I am called out of the city. I will leave on Sunday for California and will not return until the 20th of December. My visit is on urgent business and I am sorry to be obliged to go there. I had hoped that I might be present at the trial and hear the evidence and give these teachers the benefit of my judgment as to their guilt or innocence, so that if I am absent from the trial I want it distinctly understood that I am not shirking any duty or responsibility that I owe to the city, or to myself, but it is because of a business demand that I cannot possibly avoid at this time.

Mr. Greene: I have already indicated, Mr. Chairman, my disposition to give them an adjournment. I certainly have put myself to considerable inconvenience in coming here, but I wanted to be here to assist in the trial. At the same time I think it is fair that they should have the time necessary for preparing their defense.

Mr. Wellman: Mr. Chairman, may I interrupt just a moment because I do not know that I have made myself clear? I am instructed to withdraw the moment this Committee decides to go on. I am not retained as counsel. These gentlemen

will be here by themselves, and they have retained counsel.

Mr. Atkinson: I think that the request is a just one and I favor the adjournment.

Miss Leventritt: I would agree to the adjournment, Mr. Chairman.

Chairman Whalen: What day would be convenient for the Committee? They have asked for a week.

Mr. Greene: This is a very inconvenient day for me. I can come Monday or Tuesday.

Mr. Wellman: Of course, Mr. Smyth's request was for the latter part of the week. It will require a good deal of preparation in some of these things, such as the bibliography that I think Mr. Schmeer got up, supposed to contain something that should not be called to the attention of pupils. That requires considerable study. And then there are newspaper articles of another gentleman—

Chairman Whalen: The Committee are of the opinion that you should have a reasonable adjournment. There is no use of discussing the merits of the case.

Mr. Wellman: I was just showing the amount of preparation that would be necessary.

Chairman Whalen: I know, and I appreciate it. Will Monday, the 26th, at 3 o'clock, be satisfactory?

Mr. Greene: If you could finish the case between three and six, well and good.

Chairman Whalen: My notion is that we might finish the three cases in one afternoon and evening.

Mr. Wellman: It occurs to me that unless the paper trust case is further adjourned, or disposed of otherwise than by trial—I know it is set for next Monday—the Federal Court is likely to sit until 4 o'clock and Mr. Smyth is Special United States Attorney in that case.

Chairman Whalen: Mr. Wellman, we are trying to accommodate you, and the Committee have practically unanimously agreed that you should have a reasonable time. It does seem to me that if Mr. Smyth is not free to try the case on Monday, why, you will be able to fortify yourself with the facts, it is a very simple case, and it does not require so much preparation, and you can try it quite as well.

Mr. Wellman: I would repeat—

Chairman Whalen: So you can be retained. Mr. Schneer, when we adjourn this now to Monday, the 26th, it is with the understanding that you will be ready to go to trial that day, and if Mr. Smyth is engaged in court, you will try to get other counsel so you will be represented in the case.

I want to say to you, Mr. Wellman, that our view is that under the new educational law perhaps they are not entitled to counsel, but whether my view is correct or not the case is of such importance that we are going to permit Mr. Schneer and his co-defendants to appear by counsel.

Mr. Schmalhausen: May I make a remark? If the case is of such importance, why should we have any other counsel than the one we have chosen?

Chairman Whalen: I have only told you that the adjournment now is to be made to a day certain, at your request, and on that date we hope you will be ready to go to trial.

Mr. Schmalhausen: Friday, we think would be a reasonable time.

Mr. Greene: I cannot come on Friday. If we can not try it on Monday of next week, why, put it over to the next week.

Chairman Whalen: We can go on next Monday, the 26th. Set it down for Monday, the 26th, at three o'clock.

Mr. Greene: I would not like to have any suggestion made that we were hurrying them unduly.

Chairman Whalen: We are not hurrying anybody, I do not think. Mr. Smyth, I understand, has already accepted, subject to his engagements.

Mr. Schmalhausen: May I ask this: Does the Committee object to having it a week from Monday, as a reasonable length of time?

Chairman Whalen: A week from Monday would be December 3rd; that is too far off.

Mr. Winthrop: I would give them a reasonable time. Ask him if that is satisfactory to them.

President Willcox: I see no objection to that.

Chairman Whalen: Would you rather have it December 3rd?

Mr. Schmalhausen: That is a week from Monday. Yes.

Mr. McIntyre: I have a case before the Building Committee on December 3rd.

Mr. Winthrop: That could be adjourned, I should think.

Mr. Somers: I would like very much to hear the evidence in this case. I think every member ought to be given an opportunity, if possible, to hear it.

Mr. McIntyre: I am just advised that the other case can be disposed of to suit the convenience of the committee in this case, so I withdraw my statement. Any date will be satisfactory to me.

Mr. Somers: I was going to suggest that if a later adjournment could be agreed upon, I would come back, if I had to come back specially to attend the trial.

Chairman Whalen: Can you get back by the 3rd of December?

Mr. Somers: No, I cannot. I will not be there before the 2nd.

Chairman Whalen: Of course, we all would love to have you. We know the reason why you won't be here.

Mr. Somers: I am willing to make any effort to be here.

Mr. Mayer: Mr. Chairman, the Corporation Counsel wants to suggest that in making this adjournment for Monday, December 3rd, you set it down for that date peremptorily.

Chairman Whalen: Oh, yes; this is the date that Mr. Schmalhausen has asked for himself.

Mr. Greene: It is understood that it will not be postponed from that date.

Mr. Schmalhausen: Yes, unless some one dies, or becomes ill; we mean to be here that day surely.

Chairman Whalen: Is that agreeable to the Committee? Have you filed your answers yet, Mr. Wellman?

Mr. Wellman: No, sir; these are merely the specifications.

Chairman Whalen: You will file your answer, of course, before that time. Shall we fix the time when you should file your answers? What time do you say?

Mr. Wellman: How much before the trial would you really require it?

Chairman Whalen: If you file them a week before, would that be all right?

Mr. McIntyre: I think Wednesday before Thanksgiving would be ample time.

Mr. Wellman: That is all right.

Chairman Whalen: This trial of these three gentlemen is adjourned at their request to December 3rd, at 3 o'clock. The answer in each of the cases is to be filed on or before November 28th.

Mr. Schmalhausen: We want to thank the Committee very kindly for the allowance of time.

Mr. Greene: Is this Mr. Schmalhausen?

Chairman Whalen: Yes.

Mr. Greene: Mr. Schmalhausen, I notice in the press reports a remark by Mr. Schmalhausen to the effect that he thought he was going before a "packed jury." Is it a fact that you made that statement?

Mr. Schmalhausen: Is there any reason why I should discuss that now?

Mr. Greene: I wanted to know whether you had made that statement, or whether it was an unauthorized press report. Was it an untrue report?

Mr. Schmalhausen: I will discuss that at the time we meet in our regular hearing, if you do not object.

Mr. Greene: Do you think you are being tried by a "packed jury"?

Mr. Schmalhausen: If you do not object, I will answer all questions when we have our hearing.

Mr. Greene: I am asking you now before anything is done.

Mr. Schmalhausen: Just now I refuse to answer, if I have that privilege.

President Willcox: He does not deny it.

Mr. Schmalhausen: I do not affirm it.

Chairman Whalen: Gentlemen, the trial is adjourned to December 3rd at 3 o'clock P. M.

(Whereupon at 3:35 o'clock P. M. the hearing in the above-entitled matter was adjourned to December 3rd, 1917, at 3 P. M.)

DEPARTMENT OF EDUCATION OF THE CITY
OF NEW YORK.

In the Matter
of
The Charges of Conduct Unbecoming a Teacher preferred by Associate Superintendent TILDSLEY,
against
SAMUEL D. SCHMALHAUSEN,
Teacher in the De Witt Clinton High School.

New York City, December 3, 1917.

Met pursuant to adjournment at 3 o'clock P. M.

Before the Committee on High Schools and Training Schools.

Present—Mr. WHALEN, Chairman,
Mr. ATKINSON,
Mr. GIDDINGS,
Mr. GREENE,
Mr. HARKNESS,
Miss LEVENTRITT,
Mr. SOMERS,
Mr. WINTHROP.

APPEARANCES:

CHARLES MCINTYRE, Esq., and WM. E. C. MAYER, Esq., Assistant Corporation Counsel, for the Board of Education.

HERBERT C. SMYTH, Esq., and R. WELLMAN, Esq., appearing for Samuel D. Schmalhausen.

President W. G. WILLCOX and Secretary A. E. PALMER, of the Board of Education.

Chairman Whalen: The committee is now ready to hear the case of the three teachers, Professor Schmalhausen, Professor Schncer, and Professor Mufson.

Mr. Smyth: At the outset, if it please the committee, I deem it my duty to present a matter which is exceedingly disagreeable to me, in the first place, because of the nature of the protest that I am about to make, and, in the second place, because I have very long acquaintance with the Chairman about whom, under all other circumstances in the last twenty-five years that I have had the pleasure of his acquaintance, I could not think of raising such a question, but the public print and the evidence which is at our disposal leaves no other course open to me. I think I should very much like to leave the matter to the discretion of Mr. Whalen himself, but in view of the public statements made by the Chairman, and particularly in an edition of the Evening Telegram on November 25th last, and in other publications, published throughout the City, it has been borne in upon me as representing these three teachers, that Mr. Whalen has rendered himself unfit to preside as a member of this Committee, because apparently he comes in as a judge with a prejudice against them, which to my mind makes it impossible to insure, so far as the Chairman is concerned, these gentlemen will have a fair and unprejudiced hearing.

There is much evidence at my command, and which I assume will come out during the course of the hearing, that the genesis of these charges was in a resolution which was passed by the Teachers' Council, which condemned or criticised the Chairman's action in utterances which he had made with reference to the prolongation of hours of work of the teachers and school hours of the pupils, a subject which is utterly

foreign to the charges as will be easily seen by reading the charges themselves. It appears that in getting at who should be made defendants or respondents in this proceeding that in the course of the investigation the principal inquiry made of the witnesses, including the accused teachers, was not with reference to the particular charges, but the first and important question asked was "Did you vote or have any part in giving light to the so-called Whalen resolution?" the resolution which I have referred to which criticised the Honorable Chairman.

Now, under these circumstances I respectfully lodge a protest, and I say respectfully, because I have the greatest amount of respect for Mr. Whalen as a lawyer, as an officer, and as a citizen, but at the same time were I in his place I would deem myself equally unfit to act in the dual role of accuser and judge. It is a position which is absolutely opposed to all our democratic institutions. It was one that was guarded against at the time that this Republic was born, in fact, and it seems to me, that as I feel it must be the desire of all the members of the committee, including the Chairman himself, that they shall have judges who are just as impartial, sitting here with regard to the gentlemen, as would be the case if they were to be tried in a court of record down in the court house where Mr. Whalen has often graced the Bar at that tribunal, and under these circumstances I now make a formal protest against Mr. Whalen acting as chairman.

Mr. Mayer: If the Committee please, the protest which my learned adversary has so suavely lodged does not seem to me to be at all in point. He speaks of your Chairman as the accuser. Of course, the Committee knows that neither the Chairman nor any other member of this Com-

mittee preferred these charges. They come from an entirely different source. * He is the judge, it is true. We have understood for some time that some such claim as is now made was going to be made against the Honorable Chairman of this Committee. We do not believe that it is pertinent. We do not believe that the law as it is generally understood will view with displeasure the sitting of Mr. Whalen as a member of this Committee. Here he is acting as a public official. He is sworn to do his duty. The law demands that he will do his duty to the fullest extent, and with justice and without malice toward the accused. It lies wholly within Mr. Whalen's conscience whether or not he sits in this Committee. He cannot be ousted from this Committee by a protest of this kind which is far afield from the matters which will come up for judgment here. I therefore urge that Mr. Whalen in accordance with the dictates of his own conscience remain and sit as a member of and chairman of this Committee.

Chairman Whalen: I appreciate very much Mr. Smyth's position and recognize that it was his duty of course to make the objections. I know that there is nothing personal about it at all.

Mr. Smyth: Not at all.

* Chairman Whalen: Not at all. I submitted the matter to my Committee and they cannot see any reason in the world why I should not sit. I never expressed an opinion in the cases now before us, and I am not aware that I have ever mentioned the names of the defendants. I gave a correct description of the kind of teacher that I thought ought not to be in the school, and of course, if you admitted that that description fitted your clients, then I would have to admit that I have expressed an opinion which might be

taken as being opposed to them. If they do not fit the description then of course no harm has been done your clients because their names were never mentioned.

However, your objection is overruled and you may have an exception.

Mr. Smyth: That our position may be correctly understood Mr. Chairman, the views expressed by you in the abstract have my hearty concurrence. It is because of information that has come to us that you have attempted to apply those views to the three teachers, or that we fear that this testimony points in that direction, that I filed a protest. If the description were to fit my clients I would not be here defending them.

Chairman Whalen: Therefore, it is quite clear that whatever I may have said does not apply to your clients in view of the statements you have just made.

Now, No. 2 and No. 3 of your affirmative defense are overruled, and you may have an exception to those, so that narrows the issue right down to the specific charges that have been made by the City Superintendent against your clients.

I sincerely hope, and the Committee hope that you gentlemen, Mr. Smyth and the other counsel, will try this case without any feeling at all, try it in an orderly and dignified way as you always try your cases in court, and where you can stipulate in regard to testimony so as to shorten it, and we will be glad if you will do so.

Mr. Smyth: I will do everything I can.

Chairman Whalen: At the close of this and the other trials, if you feel you would like to argue the legal application as to the questions of fact brought out in the trial, we will be very glad to hear you.

Mr. McIntyre: We will proceed with the Schmalhausen case.

Chairman Whalen: Yes.

Mr. McIntyre: These are the by-laws of the Board of Education showing the jurisdiction of this Committee. May I offer them in evidence?

Mr. Smyth: May I read them?

Chairman Whalen: I ask you if your clients have any objection to reporters being present in the room? They have asked permission to be here.

Mr. Smyth: We have not. We leave that to your Honor entirely.

Chairman Whalen: May I ask, Mr. Smyth, if you will agree that the pupils from the school who have been subpoenaed here may be excused from the room during the trial?

Mr. Smyth: If your Honor thinks that is the better course.

Chairman Whalen: All the pupils subpoenaed here will please leave the room, and the officer will take care of them in the meanwhile until they are called as witnesses.

Mr. McIntyre: It just shows the power of this Committee.

Chairman Whalen: In order to shorten this trial we think maybe you can agree with the Corporation Counsel that the question here to determine is, not what took place before or after, but just what took place on this day that it will help.

Mr. Smyth: Is there a date specified? I do not know what the date is.

Mr. Mayer: We will bring the date out in the testimony.

Mr. McIntyre: I offer in evidence certified copy of Section 13, Subdivision 7, of the By-laws of the Board of Education.

The paper was received in evidence and marked Exhibit No. 1 of this date.

Mr. McIntyre: I offer in evidence certified

copy of Section 21, Subdivisions 4 and 5, of the By-laws of the Board of Education.

The paper was received in evidence and marked Exhibit No. 2 of this date.

Mr. Smyth: As I understood the Chairman to say he asked me to stipulate that what we were to try is whether the charges that are made, happened on the day intended or mentioned.

Chairman Whalen: No, I mean these interviews were said to have taken place.

Mr. Smyth: May that be specified?

Chairman Whalen: He says he is going to do it.

Mr. McIntyre: May I have the charges in the Schmalhausen case?

I offer in evidence the charges and specifications in the case of Samuel D. Schmalhausen, served personally on Mr. Schmalhausen on November 19th, 1917.

Mr. Smyth: Your point is that you wish us to admit service.

Mr. McIntyre: There is no question about due and timely service.

Mr. Smyth: Not at all.

Mr. McIntyre: I offer in evidence the charges and specifications, together with Mr. Schmalhausen's answer.

Mr. Smyth: Are you going to specify the date?

Mr. McIntyre: That will come out, Mr. Smyth.

Mr. Smyth: I think it would be fair to us to know what date we are to meet here, the same as if it were an indictment.

Chairman Whalen: Yes, Mr. McIntyre.

Mr. McIntyre: Will you just wait until this is marked?

Mr. Smyth: Yes.

The charges were received in evidence and marked Exhibit No. 3.

The answer was received in evidence and marked Exhibit No. 4.

Mr. Mayer: With regard to Mr. Schmalhausen, Mr. Smyth, the dates are occurrences in his classroom on October 22nd, 1917.

Mr. Smyth: October 22nd.

Mr. Mayer: Yes, sir, and conversations with his principal and Superintendent Tildsley, and others on November 1st and November 2nd, 1917.

Mr. Smyth: Interviews with Dr. Tildsley?

Mr. Mayer: And others, Dr. Paul and Mr. Anthony and others.

ELLEN E. GARRIGUES, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. Mayer:

Q. Miss Garrigues, you are an instructor in the De Witt Clinton High School in the City of New York? A. I am.

Q. And is that a school for boys? A. It is.

Q. And what is your employment there? A. Do you want me to rise or shall I not?

Q. No, you need not rise. A. I am head of the English Department, Chairman of the English Department, First Assistant in English.

Q. Do you know Mr. Schmalhausen, one of the instructors at that school? A. I do.

Q. What class does he teach? A. He has several grades of work.

Q. What subject does he teach? A. English.

Q. As a teacher of that subject, is he under your jurisdiction and supervision? A. Yes, sir.

Q. Do you remember an occurrence in his classroom on or about October 22nd, 1917? A. Yes.

Q. With regard to some composition? A. October 22nd was it?

Q. Yes, 1917. A. Yes.

Q. Do you remember going to his room and

having compositions by his students of his classroom on a theme given by him to the boys to write on read? A. I do.

Q. I show you this slip, and ask you if that is substantially the theme referred to? A. Yes—I do not remember that the word “very” occurred before “frank.”

Q. Did you speak to Mr. Schmalhausen about this theme on that occasion? A. I spoke to the class.

Q. To whom? A. I spoke to the class as a whole.

Q. In his presence? A. Yes.

Q. What did you say? A. Well, about that?

Q. About that theme? A. Well, pardon me, I did not say anything about that assignment to the class.

Q. Did you speak to Mr. Schmalhausen about it? A. Not on that occasion.

Q. Not on that occasion? A. No.

Q. On that occasion—

Mr. Mayer: I ask that this paper be marked for identification.

The paper was marked Exhibit 5 for identification.

Q. Now, Miss Garrigues, on that occasion tell what occurred in the classroom? A. I was sent to the classroom by the principal. I came in the class, and the boys had setting up drill as usual, and then our periods are divided into two grades in the DeWitt Clinton High School, the first half is for recitation, and the second half is for study. Mr. Schmalhausen called on a student to read his composition and he read the composition on the subject given. As I remember his composition, the first one read, the boy objected to the form of the draft because it called people who had dependents, and the comment of the teacher at the end of that, that that had

been remedied by the later adjustment of the draft. Then there followed a composition which objected to the Liberty Loan on the basis of its calling upon the people who were already too highly taxed by the rise in prices. And as I remember no special comment was made on that. I am not sure about the next composition. I think there was another one read. I do not remember the contents of it.

Finally one was read in which the young man said that it was somewhat unwise, I do not know that I can remember, but the general trend of the composition was, that we should not attempt to—

Mr. Smyth: If this was in writing I suppose it would be safer to have the writing before us rather than the recollection perhaps, which might be faulty.

Mr. Mayer: These are not the facts in issue.

Mr. Smyth: They are not the ones?

Mr. Mayer: No.

Mr. Smyth: All right.

The Witness: Then the composition which was read, he asked me to tell all that occurred, as near as I can remember.

Mr. Smyth: Yes.

By Mr. Mayer:

Q. I want to get to the point where we came to this composition taken up by you? A. Do you want me to tell what occurred in the room?

Q. Yes. A. I was trying to do that as near as I can.

Q. Yes. A. Finally a composition was read which said that we had, let me see, we should not attempt to promulgate democracy without having a better form of democracy here, and a boy jumped up and said that Germany had a democracy more truly than we. Another boy

jumped up and said that democracy in Germany was economic and not political. There was some discussion over that among the boys. I said to the boy who spoke "Are you an American citizen?" the boy who had made the statement, and he said "Yes, so is my father." I said "I can scarcely believe it." By this time I was growing very angry, because there seemed to be a lack of spirit of love of country among the boys who had read.

Q. Just what did you do? A. Then I—another boy began to read. The bell rang for the second half of the period. I said "We will take up all papers, and you will all hand your papers in to me," so they were all handed in to me.

Mr. Smyth: By the pupils?

The Witness: By the pupils directly.

By Mr. Mayer:

Q. Was this paper which I now hand you one of those which was taken up by you from the pupils on that occasion? A. Yes.

Q. What did you do with all those compositions, including the one you say was handed to you? A. I took them immediately down to the principal because I should have taken them in any case, some of them, but I took them all down to the principal and handed them over to him.

Q. Including this one? A. Yes.

Mr. Mayer: I offer this one for identification.

The paper was marked Exhibit 6 for identification.

By Mr. Mayer:

Q. Then you left these papers with the Principal, Dr. Paul? A. Yes.

Mr. Mayer: That is all.

Cross examination by Mr. Smyth:

Q. The paper which is marked for identification No. 6, which is the letter written by the boy Herman, I suppose? A. Yes.

Q. That was handed to you by Herman? A. It was handed to me, all the papers were handed to me by one boy, I do not know who handed them to me, they were collected and handed to me directly.

Q. The marginal notes that appear on this paper were not there then were they? A. No.

Q. And this letter was not shown to Mr. Schmalhausen? A. No, not by me.

Q. Nor was it read in class? A. No.

Mr. Smyth: There is no such claim?

Mr. Mayer: No claim of that.

By Mr. Smyth:

Q. Did you address a letter about this matter, Miss Garrigues, to the School Editor of the Globe? A. I did.

Mr. Mayer: I object to that as immaterial and irrelevant.

Chairman Whalen: Yes, you had better not go into that Mr. Smyth.

Mr. Smyth: Your Honor overrules the question and sustains the objection?

Chairman Whalen: Yes.

Mr. Smyth: We except.

Mr. Mayer: If the Chairman please, the answer seems to have gotten in the record and I move to strike it out.

Chairman Whalen: What answer?

Mr. Mayer: The witness's answer.

Chairman Whalen: Strike it out.

Mr. Smyth: May I not establish the fact that a letter was written and make mention of its contents?

Chairman Whalen: Well, perhaps you can.

Mr. Mayer: I withdraw the motion.

Chairman Whalen: Strike it out.

By Mr. Smyth:

Q. You did write a letter, did you not, to the School Editor of the Globe with regard to your call there at the school?

Mr. Mayer: I object to that as immaterial and irrelevant.

A. I did write such a letter. I did not write it, it was not about that, it was about that whole situation at the school. It included—

Chairman Whalen: You had not—would it not be better if you produced the letter and ask her if she did write that letter?

By Mr. Smyth:

Q. I show you a paper which contains a quotation from that letter and ask you if that quotation was contained in the letter which you wrote to the editor? It is the part in capitals? A. Yes, I wrote that.

Mr. Mayer: May I see that?

Mr. Smyth: Certainly.

By Mr. Smyth:

Q. Is it true, Miss Garrigues, that what you observed there, that the response to the assignment that you were then fulfilling, was in itself largely patriotic? A. Not what I observed there. I looked over papers, the same assignment was made to another class, and I looked over other papers, and I found a very good many patriotic responses to the assignment, and in the other class very largely they were patriotic in their nature. Those that I heard there that day were not. That is the reason I was so particularly aroused.

Q. When you went to go over the papers them-

selves afterward? A. Those that were not read were many of them patriotic.

Q. Patriotic? A. Yes.

Q. And such compositions that nobody could take exception to, so far as their Americanism is concerned? A. Exactly.

Q. Is that true? A. Yes, sir.

Q. You knew no more about this Herman letter than Mr. Schmalhausen did at the time, did you?

A. I glanced through it as I sat there. I glanced through the letters which were handed to me, and this one was one of the first.

Q. Yes. A. And it made me very angry and I think I perhaps especially noted it in handing it to the principal.

Q. But you said nothing at all to Mr. Schmalhausen about it? A. That particular letter?

Q. Yes. A. I only said that I did not think that any of the boys in the class knew what had been written, or they themselves would have been deeply ashamed.

Q. And that is all you said? A. Yes, I said that to the class as a whole.

Q. You said nothing to Mr. Schmalhausen? A. About this particular letter?

Q. Yes. A. No, I do not think so. I spoke to him about the assignment.

Q. You did speak to him about the assignment? A. Yes.

Q. Did you state to him the purpose of the assignment, what the purpose was? A. I told him I thought it was an unwise assignment.

Q. What else did you say in that regard, Miss Garrigues? A. That was after, an hour or two afterward, and I told him, yes, I think it was the same day, an hour or two afterward, I told him I thought it was a very unwise assignment and we had considerable discussion over whether it was wise or not.

Q. May I ask why you considered it an unwise assignment? A. I think the reason was that it was a little bit, in the nature of the wording, inclined to lead boys who were either pacific, I think is the real trouble, or were unpatriotic—this boy unquestionably was unpatriotic, I think—to express themselves very freely, which I do not know whether it is very wise for boys of that age to do.

Q. Was the word “very” in the assignment that you saw? A. I do not think it was, I am not very sure.

Mr. Mayer: Suppose we put that in evidence. Then you can question on it if you like.

Mr. Smyth: Let me first find out, Mr. Mayer, if we have it in evidence.

Mr. Mayer: Very well we can prove that later on.

Mr. Smyth: Subject to its being stricken out if not proved.

Mr. Mayer: I offer it in evidence.

Chairman Whalen: Any objection?

Mr. Smyth: No, except I reserve the right to move to strike it out if it is not properly connected later on.

Exhibit No. 5 for identification was received in evidence and marked Exhibit No. 5 in evidence.

Mr. Mayer: Now, just let me read it: “An open letter to the President. Write a very frank letter to Woodrow Wilson commenting within the limits of your knowledge upon his conduct of the war against the German Government.” The witness says that this assignment is as she recollects it, except the word “very.” It would read as she remembers it “Write a frank letter.”

Chairman Whalen: Who gave out that subject?

By Mr. Mayer:

Q. Who gave out that subject, Miss Garrigues?

A. Mr. Schmalhausen.

By Mr. Smyth:

Q. Was not the wording of the assignment in this wise: "An open letter to the President, comment frankly upon his conduct of the war against the German Government." Was not that the wording? A. Now that you ask me I am not sure, but I know the word "frank" is what troubled me. I think the word "frank" influenced the boys toward the expression of sentiment that perhaps would better not be expressed in the classroom.

Q. After all so far as the wording of the assignment goes, whether it said "Write a frank letter" or "write frankly commenting on the President's conduct of the war against the German Government", to your mind did that call for anything more than just such a discussion as we see in our daily newspapers from day to day? A. I thought—

Q. No, is not that so? I am now asking if that is not so? A. My own opinion was as I said, I thought it was injurious.

Q. You are not answering this question at all. A. I am sorry.

Q. The assignment as worded, did it really, in your opinion, call out anything more than such a discussion as we see very day in the various patriotic newspapers? A. If you put it that way; no.

Q. Exactly the same is it not? A. Yes.

Q. And I suppose that you sometimes have commented frankly on the conduct of the war by the President?

Mr. Mayer: I object to that as immaterial and irrelevant.

Chairman Whalen: That is cross examination. All right.

Q. Have you not, Miss Garrigues? A. Well, I feel at liberty to.

Q. Certainly. And do you not bear in mind as a teacher that it is such a subject which, through attrition of ideas, really bears fruit in getting some valuable principles forward which it is worth while for the community in general to think about and still be patriotic? A. This particular question. I do not know that I can say that I feel that way about it. It was the wording that troubled me, not the question. It was the wording of the question.

Q. Have I not correctly stated the way the question was worded, "Write an open letter to the President and comment frankly upon his conduct of the war against the German Government"? A. The wording of the question I do not like.

Q. Does not that refresh your recollection that that was the wording? A. I cannot be sure, but I daresay the correct wording was given by the teacher rather than by the boy; that is in the handwriting of the boy.

Q. That was in the handwriting of the boy? A. Yes.

Q. When was it made? A. I think it was handed in at the same time as the papers.

Q. So that may be his recollection? A. Yes.

Q. Faulty or correct? A. Yes.

Q. And at any rate you have nothing to criticize from your own point of view, have you, that frank comment is the perfectly legitimate and proper thing for patriotic citizens whether they are young or old to indulge in; is not that so? A. I would not answer that question yes or no.

Q. Let us look at it from another point of view. Would you consider comment upon the conduct of the war by the President which was not frank a proper way to discuss it? A. No.

Q. Therefore, the element of frankness is essential to any discussion which is worth the while. Is not that so? A. I suppose so.

Q. So in that view of it there is nothing in this assignment which ought to cause any apprehension that it would bring forth unpatriotic statements; is not that true? A. Well, I do not know that I can say one way or the other. I do think that there are assignments that can be so worded that they could avoid that element of risk that is in this one.

Q. Now, Miss Garrigues, you exhibit an absolute spirit of fairness in this matter, won't you please word that assignment in the way you think it ought to be worded. It is marked with a cross there? A. I should not give that assignment at all.

Q. You mean you would not give it at all? A. I mean I should not give that assignment at all.

Q. It was not so much in the wording of the assignment as the subject itself, is that it? A. The subject seems to me wrong for as immature people as that. I think the wording made it a little bit, possibly I do not—I will say frankly for Mr. Schmalhausen that I do not think he realized at that time, or I do not think he believed he was going to cause such a storm that he did among the boys.

Q. Is your trouble not perhaps that you have confused the word "comment" with the word "citicised"? A. Possibly.

Q. There surely can be nothing wrong in making comments on this subject so long as they are patriotic, can there be? A. I believe in debate in the classroom on all current topics.

Q. This was a current topic? A. Yes.

Q. Is not this just the kind of a subject which would stir the patriotism of the children rather than stir contrary feelings or instincts? A. That is what I do not feel, exactly. I felt the word was unfortunate; that it did not stir the boys as it should.

Q. Now, that you are viewing the subject in

the light of your cross examination, do you not think that perhaps after all this was a perfectly legitimate subject to ask for frank comment in the sense of fair comment, on the subject which was of universal interest, and should be of interest to children as well as adults? A. They are not children. They are about seventeen years.

Q. So much the better. Young men of such mature age? A. Of course I think that criticism that comes out in the class is good, because it can be counteracted, but I do not feel that there was sufficient counteraction from the boys themselves. Whether there would have been if the recitation had been continued to the proper end, I do not know.

Q. Have you not by this last answer struck the keynote of the real good of such a discussion? Is it not so that such a discussion would be apt to develop the sentiments of those who are patriotic, and statements from those who are unfortunately otherwise inclined, to the end that those who are in error may be corrected? And thus much good come from it? A. That is what I firmly believe, but I am not sure that it was in effect in this particular recitation.

Q. Is not that just the kind of thing that ought to result if proper comment were made? A. Yes.

Q. Do you not believe in your comments that you probably had some good results in calling attention to those things that you did not think were particularly patriotic? A. I am afraid I was too angry to have very much good effect.

Q. Then it was more because of your mental attitude than because of your desire or opportunity? A. (No answer.)

Mr. Smyth: I think that is all at the present time.

Mr. Mayer: That is all.

Mr. Smyth: Oh, just one second.

By Mr. Smyth:

Q. Who was it asked you to go to the class and make this investigation? A. The principal asked me.

Q. Who is he? A. Dr. Paul.

Q. Do you remember what he said at the time he made his request? A. He told me to go the room and visit the class and bring him the papers.

Q. Was that all that was said? A. That is all that I remember. Oh, yes. He said he thought it was a very treasonable assignment, that is an assignment I think, pretty near—I have forgotten whether he used the word treasonable or not, but it was a very unfortunate assignment, and near to seditious; I think he used the word sedition. I am not sure.

Q. Was he then referring— A. To the assignment which he had been given by a boy.

Q. You are now referring to some paper? A. No, no, the assignment that had been given him.

Q. The assignment that had been given in the various classrooms or in this one classroom? A. No, in this one classroom.

Q. Had he the assignment before him at the time? A. Yes, it had been given to him. That is the reason he sent me to the room.

Q. He said it was seditious? A. I cannot be sure. I do not want to quote him, because it is the memory of the effect of his words, he thought it was a very serious, unfair assignment and I should visit the class.

Q. Is that all that you can recollect that was said by Dr. Paul at that time? A. I think that is all; yes.

Q. Did he say anything at that time about any occurrence at a meeting of the Teachers' Council? A. No.

Q. When you handed this paper back to Dr.

Paul which you had collected, you called special attention to the Herman letter did you not? A. I think so. I was very much wrought up, and I handed it to him, at least I was very much wrought up and I handed it to him and said it was very sad to me to think that more loyalty did not exist in the boys.

Q. Did he make any exclamation at that time in reference to the position that he deemed Mr. Schmalhausen to be in? A. He said, I think —Yes, he said something.

Q. What was it he said? A. He said, I think, "I have him now."

Q. Are not the words that he said, "Now, I've got him"? A. I think so.

Q. You think so? A. Yes.

Q. Had you known prior to that time that Dr. Paul was trying to get something on Mr. Schmalhausen?

Mr. Mayer: I object to that as immaterial and irrelevant.

Chairman Whalen: Yes, excluded.

Mr. Smyth: Exception.

Q. Do you remember having a conversation with Mr. Horowitz with regard to the object of the inquiry that was being undertaken against Mr. Schmalhausen?

Mr. Mayer: I object to that as immaterial and irrelevant.

Mr. Smyth: I think I am entitled to show animus if there is any.

Mr. Mayer: It does not make any difference whether there was any animus or not.

Chairman Whalen: No, I do not think it does. We are just trying this specific charge. Your client said, on this day these things. We won't pay any attention to the animus of Dr. Paul, if any.

Mr. Smyth: It may have this to do with it

your Honor, that it will go to the credibility of those who framed the charges if they had a definite purpose and prejudgment coming from a definite purpose beforehand in attributing innuendoes or insinuations or interpretations or statements alleged to have been made by Mr. Schmalhausen. It sometimes takes but the transposition of a little word to spell the difference between guilt and innocence. If there has been a predetermined effort, in the words of Dr. Paul, "to get Mr. Schmalhausen," we find an underlying motive for that which will be illuminative when we come to hear the testimony of his accusers.

Chairman Whalen: Mr. Smyth, we are interested in trying these charges, and if there is any feeling between Dr. Paul and Mr. Schmalhausen I do not think that we want to go into that, because these charges are preferred by the superintendent and they are specific, and if we are going to undertake to try all these little things that happened before and after, we will never get through with the trial of this case.

Mr. Smyth: May I respectfully urge to your Honor that the only object I have in asking this particular question is to show that the genesis of these charges was an occurrence which had previously resulted in the adoption of the resolution which were critical of your Honor.

Chairman Whalen: Mr. Smyth, may I set you straight on that subject? The adoption of the resolutions by the five gentlemen composing the Teachers' Council of De Witt Clinton High School had nothing at all to do with the charges so far as I am concerned.

The Witness: They occurred later.

Mr. Smyth: They occurred later?

The Witness: This statement, I think the resolutions were made later than this conversation.

Chairman Whalen: I want to say furthermore, that for the purposes of this trial I have assumed that they had a perfect right to pass any resolution that they saw fit, so if you will eliminate the resolution it will be very well, because it has no relation whatever to this case so far as I am concerned.

Mr. Smyth: It may not have been the resolution itself, but it may relate to the activities of these teachers which led up to the resolution, and I will ask this specific question and rest with your Honor's decision on it.

By Mr. Smyth:

Q. Did you not state, Miss Garrigues, that the object of this investigation which had been undertaken against Mr. Schmalhausen was to get the ringleaders of the Teachers' Council who were close to Mr. Whalen in the matter of lengthening the school hours?

Mr. Mayer: That is objected to as immaterial and irrelevant.

Chairman Whalen: I will let her answer that.

A. I do not remember. I talked to Mr. Horowitz I know, but I do not remember that I made any such full statement as that. Perhaps I have gotten the wording wrong.

Q. Will you tell us what your recollection is of such a conversation with Mr. Horowitz? A. If I said anything of the sort I said I thought it had some influence.

Q. What is that? A. If I said anything of that sort—I may have said,—

Q. Said anything of what sort? A. Of the kind you are asking me.

Q. Is it your recollection that you did say something of that kind? A. Very likely.

Q. If you did, if it is true that you did, very

likely it was because you believed it, is not that so? A. Yes, I think it had influence.

By Mr. Mayer:

Q. After those compositions were read, and before you left the room, did you have any conversation with Mr. Schmalhausen on the question of loyalty? A. Not in that room; later.

Q. How much later? Later in the day? A. Yes.

Q. What was it he said to you on the question of loyalty?

Mr. Smyth: This is by Mr. Schmalhausen?

Mr. Mayer: Mr. Schmalhausen.

Mr. Smyth: On which date?

Mr. Mayer: Later on that day of October 22nd.

The Witness: I have forgotten; we discussed generally the attitude of the boys toward discussing the President, and I think I said that I did not think that Mr. Schmalhausen was very loyal, and he said that he was loyal to the truth rather than to persons.

Q. Rather than to persons? A. Yes.

Mr. Mayer: That is all.

FRANCIS H. J. PAUL, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. Mayer:

Q. Dr. Paul you are the Superintendent of the De Witt Clinton High School? A. Yes, sir.

Q. A boys' high school? A. A boys' high school.

Q. What are the ages of the boys who attend that school? A. They run from fourteen to nineteen in the main.

Q. From fourteen to nineteen? A. Fourteen to nineteen in the main.

Q. And the boys of Mr. Schmalhausen's class are about of what age? A. Seventeen.

Q. Where does that school draw its pupils from in the City? A. All over Manhattan and the Bronx, mostly the upper east and lower east side.

Q. Do you remember, Dr. Paul, on or about October 22nd, 1917, Miss Garrigues bringing to you compositions from the classroom presided over by Mr. Schmalhausen? A. I do.

Q. Amongst the compositions brought is that Exhibit No. 6 for identification one of them? A. It is.

Q. Is that Exhibit No. 6 for identification, with the exception of the lead pencil comments noted on it in the exact state in which it was when it was presented to you by Miss Garrigues on that occasion? A. It is.

Q. Did you, subsequent to Miss Garrigues handing this to you, have any conversation with Mr. Schmalhausen with reference to this Exhibit No. 6 for identification? A. I did.

Q. What was said? A. Later in the week I sent for Mr. Schmalhausen and asked him if that assignment had been made by him.

Q. I show you the assignment. First, breaking in on that is Exhibit No. 5. What did you say to him about that? A. I asked him if he considered this a judicious and proper assignment.

Q. Was that the identical paper that you had in your hand at the time? A. This is the paper.

Q. What did he say? A. He said that he thought this was a proper assignment to be given a class at the De Witt Clinton High School at this time.

Q. What conversation did you have then with reference to this Exhibit No. 6 for identification?

A. I had no conversation with him regarding this exhibit at that time.

Q. At that time? Later on, did you have a conversation with him with regard to this Exhibit No. 6 for identification? A. That Exhibit No. 6 was presented to him.

Q. Did you have a conversation with him later on? A. No.

Q. Were you present when any conversation was had with reference to it? A. I was.

Q. Where was it? A. There were two conversations.

Q. No, the first one? A. The first one was in the evening night school office in the De Witt Clinton High School building.

Q. Who were present on that occasion? A. Dr. Tildsley, Mr. Schmalhausen and myself.

Q. Anybody else? A. Not on the first occasion, as I recollect.

Q. Between whom was the conversation had with reference to this Exhibit 6? A. On the first occasion?

Q. Yes. A. Dr. Tildsley, Mr. Schmalhausen and I.

Q. What, I mean, who did the talking, who was speaking on that occasion? A. Dr. Tildsley and Mr. Schmalhausen. I was merely a witness.

Q. Did you hear what Dr. Tildsley said to Mr. Schmalhausen with reference to this paper? A. I did.

Q. What was it? A. He read the letter, the first page of the letter through to Mr. Schmalhausen and asked him whether he considered that was the proper kind of a letter to be read in a classroom at this time. He said he had no objection.

Q. What did Mr. Schmalhausen say? A. Mr. Schmalhausen replied that he saw nothing in

the letter to correct, that if the boy felt the sentiments which were expressed in the letter it was proper for him to express those sentiments, and that while he might have made some corrections as to the organization or form of English in the letter, he would not have felt under any obligation to correct the sentiment of the letter.

Q. Anything else on that occasion that you remember? A. Yes, Dr. Tildsley asked him did he not think that the form of assignment was an improper one; did he not think that the expression "Write a letter to Woodrow Wilson" was improper; should he not have used some more honorable term or form of salutation to the President of the United States. Mr. Schmalhausen replied that he did not see any particular reason why he should emphasize any form of salutation to the President of the United States any more than to any citizen, he mentioned John Brown or John Smith, I do not know which name, and Dr. Tildsley then asked him, "Do you think that you ought to inculcate a respect for the President *per se*?" and he said, "No," he felt that he was not under any obligation to inculcate instinctive respect, but it might be proper for him to inculcate reflective respect; that the President of the United States should receive as much respect from a boy as he showed respect for the boy, as he, the President, shows respect for the boy.

Q. Anything further on that subject that you remember? A. It is not fresh in my mind at the present time.

Q. Did Mr. Schmalhausen say on that occasion what he meant by reflective respect? A. He implied it by the remark that he would teach the boy to show as much respect for the President as the President showed for the boy.

Q. Now, subsequent to November 1st, and November 2nd, was there a further conversation between Dr. Tildsley and Mr. Schmalhausen in the Evening High School office with regard to this letter? A. There was.

Q. What was the conversation on that occasion with regard to this paper? A. Dr. Tildsley showed him a letter on this occasion and said to him, "Of course, I have not shown you this full letter and I think you should read the complete letter." He was given the opportunity to become acquainted with the contents of the complete letter.

Q. Did you see him read it? A. Yes.

Q. What was then said to him by Dr. Tildsley? A. Among other things he asked, "Do you still believe that that letter may be read in a classroom to the boys?" He said, "Yes." He said, "Do you think that if this boy brought in another letter, showing the same sentiment at the end of a week it would be proper for you to have this boy read the second letter?" and he said, "Yes." He said, "Do you think that if this boy brought in that same type of letter, showing the same type of sentiment a third time in succession, would it be proper for the boy to read it before the class?" and he said, "Yes." He said something about there was no objection to it; the school was not a doll's house.

Q. Perhaps I misled you into asking you where that second conversation took place. Was it had in the school, in the high school office, or in your office? A. The second conversation was had in my office.

Chairman Whalen: Who was present?

Q. Who was present on the second occasion? A. On the second occasion, Mr. Schmalhausen, Dr. Tildsley, Mr. Anthony, Mr. Margolies was present, and myself.

Q. Who is Mr. Anthony? A. Mr. Anthony is the Assistant Principal in the school.

Q. And who is the other gentleman? A. He is one of the clerks.

Mr. Mayer: Now, I offer this Exhibit 6 for Identification in evidence.

Mr. Smyth: With the pencil memorandum?

Mr. Mayer: No, without the pencil memorandum. I will have some testimony with regard to those later on.

Chairman Whalen: Any objection, Mr. Smyth?

Mr. Smyth: No.

Exhibit No. 6 for Identification was received in evidence and marked Exhibit No. 6 in evidence, and is as follows:

"Herman, H. 5
Eng., 715.
1-3 Ridge St.,
New York, N. Y.

To the Defender of Humanity and Champion of Democracy, Woodrow Wilson:

Undoubtedly the time will come when people not so ignorant and unappreciative as we are, will unanimously voice their approval of the work you are now engaged in—a work in which you have pledged all our lives, fortunes, homes and honor, without in the least consulting us, ignorant brutes that we are—so that those who are so nobly sacrificing themselves for so righteous a cause may in the hereafter realize the fruits of their toil. In short, you are ready to slaughter us all in order that we may enjoy that in death which we are now lacking in life. But please, Your Excellency, do not deign even to listen to me; I am only of the 20th Century, while you are a Messiah in disguise, sent

to show us the path to virtue, righteousness and spiritual glory. (The highly despicable material glory is too low for us, and we gladly hurl it at those high priests of materialism in their Holy of Holies, which I need not tell you is Wall Street.) Therefore, my Most Exalted Ruler, peruse my worthless epistle with deepest scorn on your noble features, and immediately cast it into the fire; but please forget not to wash and rub your hands thoroughly, and for that purpose I recommend the sacred oil of the Standard Oil Company.

When the Allies first declared war on the Central Powers, all were kept guessing as to the exact causes of it. Of course, the breaking of Belgium neutrality and the Allies' promise to protect her, was too weak a reason to the man not too influenced by the 'yellow' press to be able to use a little thinking power. No man with any brains whatsoever, would accept that as proof which has been proven to be empty, for would that have been the first time that England would have broken a contract, or France; had England or France been so pure and faultless until then. Yet, for lack of a better reason, this had to be offered. But as soon as Russia freed itself from its yoke and the U. S. entered the war, it took only a comparatively short time before the cry of a 'War for Democracy' and a similar war-yell of 'Down with Prussianism' began to permeate the already polluted atmosphere of this nation. What mattered the petty Italian autocracy, and the exact facsimiles of the Russia of the past, Roumania & Servia. Certainly the entrance of Siam on the part of the

Allies changed not the outlook, although Siam is the only complete autocracy in the world, including Germany.

Pray, Your Highness, do not misunderstand me—I do not sympathize with the autocratic Germany, and there is no one more than I who wants to see the complete obliteration of all Junkers and Pan-Germanists. But how is it that the U. S., a country far from democratic (and daily proving itself to be such) and England, the imperial and selfish (and we exclude all minor participants) undertake to slam democracy upon a nation whether it likes it or not? What unparalleled audacity to attempt to force 70,000,000 people to adopt a certain kind of government. If we mean their benefit, then the Germans surely know what they want and need us not. Kiss them not and bite them not. You don't seem to realize that you are simply embittering them against such audacious conduct.

As far as I understand, we are for no indemnities and no annexations—of course except a billion here, a billion there, Alsace-Lorraine to France, Trieste and the Isonzo region to Italy, and so forth. Why is it that France, which has never returned willingly any territory acquired in her numerous wars should thus demand a province already a part of Germany for the past 47 years? And why are her allies so ready in backing her up? If this be the war's programme, then why throw dust into our eyes? 'Tis true we are only dust, but too much is too much. Finally, if our aim be the annihilation of Prussianism, then why in the name of Heaven have you

refused the offer made by Germany, which included the evacuation of Belgium, disarmament of nations and freedom of the seas? Surely then your purpose is to get supreme domination and to crush Germany for no reason it seems, except a mad desire for murder, meanwhile making us the goats.

But, my Most Venerable Lord, I fear I am tiring you, and I shudder to think that as result you may be delayed in your grand wholesale murder. There, with the sincerest hopes that you will not take anything I have written to heart,

I remain,

Your most obedient and humble servant,

HYMAN HERMAN."

Mr. Mayer: On the margin of this letter you will find a memorandum in pencil. How did this memorandum come to be placed on that exhibit?

A. At the close of the interview Dr. Tildsley—

Q. This is on the 2nd of November? A. On the 2nd of November, Dr. Tildsley turned to Mr. Schmalhausen and said, "How would you correct this letter?" Mr. Schmalhausen asked time in which to make the corrections. Dr. Tildsley and I left the office and while we were gone Mr. Schmalhausen made these corrections. When we returned he handed the letter as it now is with the corrections to Dr. Tildsley, and he said, "Of course you understand that my corrections are more extensive than they would ordinarily be."

Mr. Mayer: Now, if it please your Honor, I think I had better read this letter because it is the fundamental of this case.

Mr. Mayer reads Exhibit No. 6 to the Committee.

By Mr. Mayer:

Q. Were you present after Mr. Schmalhausen put these pencil notes on the paper?

Mr. Smyth: May I read these pencil notes so that we can have the record complete? As it goes now there is only one side of it.

Mr. Mayer: Yes, you can read them. Certainly, I withdraw my question.

Mr. Smyth: To the salutation, "To the Defender of Humanity and Champion of Democracy, Woodrow Wilson," Mr. Schmalhausen has noted, "wrong salutation."

The letter goes on "Undoubtedly the time will come when people not so ignorant and unappreciative as we are will unanimously voice their approval of the work you are now engaged in, a work in which you have pledged all our lives, fortunes, homes and honor, without in the least consulting us, ignorant brutes that we are." To that Mr. Schmalhausen has commented, "exaggerated, excessive, emotionalism."

The letter goes on, "In short, you are ready to slaughter us all," and to that Mr. Schmalhausen has annotated, "Is there any sanity in this assertion?"

The next sentence that is criticised is, "The highly despicable material glory is too low for us, and we gladly hurl it at those high priests of materialism in their Holy of Holies, which I need not tell you is Wall Street." Here the comment is "very confused utterance."

The next is, "Therefore, my Most Exalted Ruler, peruse my worthless epistle with deepest scorn on your noble features, and immediately cast it into the fire; but please forget not to wash and rub your hands thoroughly, and for that purpose I recommend the sacred oil of the Standard Oil Company." The comment is, "Do you take these remarks seriously?"

From the letter I am reading now. "Of course, the breaking of Belgium's neutrality and the Allies' promise to protect her, was too weak a reason to the man not too influenced by the 'yellow' press to be able to use a little thinking power." The comment is "Not a clear reference."

And to the next sentence the comment is "Not clear to me."

To the next sentence the comment is "What?"

The next sentence which reads "Down with Prussianism" that is a little bit involved: "Yet for lack of a better reason this had to be offered, but as soon as Russia freed itself from its yoke and the U. S. entered the war, it took only a comparatively short time before the cry of a 'War for Democracy,' and a similar war yell of 'Down with Prussianism' began to permeate the already polluted atmosphere of this nation." The comment is "In what sense?"

Again, the next one "What mattered the petty Italian autocracy and the exact facsimiles of the Russia of the past, Roumania and Servia." It says "In what sense?" Then the next comment is "clumsily worded." The same comment is made with regard to the next sentence "Sane attitude" and then with respect to the sentence "But how is it that the U. S. a country far from democratic (and daily proving itself to be such) and England, the imperial and selfish," and so on, he says "In what specific particulars?" He further says "word usage bad," as to "undertake to slam democracy," "word usage bad." The last letter reads this way: "Undertake to slam democracy upon a nation whether it likes it or not." Comments on this whole subject by Mr. Schmalhausen we find "Recall President Wilson's differentiation between German government and people."

Reading from the letter again, "What unparalleled audacity to attempt to force 70,000,000 people," that is included in the former comment, "to adopt a certain kind of government! If we mean their benefit, then the Germans surely know what they want and need us not. Kiss them not and bite them not. You don't seem to realize that you are simply embittering them against such audacious conduct." The comment is "Crude language" with regard to "Kiss them not and bite them not." In addition "Is that so?" in regard to "Germans surely know what they want and need us not."

Reading from the letter "as far as I understand, we are for no indemnities and no annexations. Of course, except a billion here and a billion there." The comment is "Not accurately presented."

Then going on: "Alsace-Lorraine to France, Trieste and the Isonzo region to Italy and so forth." The comment is "Be more specific."

Reading from the letter again: "Why is it that France which has never returned willingly any territory) acquired in her numerous wars should thus demand a province already a part of Germany for the past 47 years." The comment is "Foolish attitude historically." Then there is a comment on the 47 years, referring to its being historically inaccurate. I suppose the word is historically. Reading from the letter again, "Tis true we are only dust, but too much is too much." The comment is "Irrelevant."

Again reading from the letter: "Finally, if our aim be the annihilation of Prussianism then why in the name of Heaven have you refused the offer made by Germany which included the evacuation of Belgium, disarmament of nations and freedom of the seas." The comment is "When? Do you believe in its sincerity?"

Again reading from the letter: "Surely then, your purpose is to get supreme domination and to crush Germany for no reason it seems except a mad desire for murder, meanwhile making us the goats."

The comment is "For a thoughtful student this statement sounds irrational."

Again reading from the letter: "But, My Most Venerable Lord, I fear I am tiring you, and I shudder to think that as a result you may be delayed in your grand wholesale murder. Therefore, with the sincere hope that you will not take anything I have written to heart, I remain, Your most obedient and humble servant, Hyman Herman."

The comment is "Sorry to find this unintelligent comment in your work. Why did you write this?" The comment is "For a thoughtful student this statement sounds irrational, sorry to find this unintelligent comment in your work, why did you write this?"

By Mr. Mayer:

Q. On the occasion when you had the conversation with Miss Garrigues about going to Mr. Schmalhausen's classroom with regard to these compositions under this assignment, what was it that you said to her? A. If I recollect distinctly I said, "This thing has gone too far, it will be necessary for me to report this," and "I must ask you to give me a written report of your observations in the classroom when this letter was presented."

Q. Did you on that occasion say anything about "Now I have got him," or anything of that kind? A. Absolutely not.

Mr. Mayer: That is all.

Cross examination by Mr. Smyth:

Q. Then you are at variance entirely with Miss Garrigues? A. On that statement.

Q. She says that you said, "Now, I've got him." Did you not say that? A. I regret that I must remain at variance with Miss Garrigues.

Q. You have always known her as a lady of absolute veracity, have you not? A. Yes.

Q. Can you imagine how she could make such a mistake as that? A. I can only—the only solution I can get would be from the words of your client commenting on Miss Garrigues in the room at the time when he spoke of her as an emotionally energized lady on occasion.

Q. Do you think that is any answer to my question? A. I can find no other.

Q. Do you specifically remember that you used that language you said you used? A. Quite specifically, Mr. Smyth.

Q. How do you remember that language? A. I cannot quite catch your point.

Q. Why is it that you recollect it precisely? A. I do not remember every word in the sentence now, Mr. Smyth.

Q. Was your comment at that time something that was sufficiently impressive for you now to recollect what it was? A. Yes, I think so.

Q. If you had used the words, "Now, I've got him"? A. That would have been impressive and I certainly would have remembered it.

Q. You would have remembered that? A. Yes.

Q. If Miss Garrigues says she remembers it, is not it something that passes your comprehension that you have forgotten it? A. It might pass my comprehension that anyone else would accuse me of it.

Q. You have had some conversation with Dr. Tildsley with regard to Mr. Schmalhausen, and the other gentlemen who were instrumental in framing the resolution, or were about to frame a resolution at a meeting which was just then to be had with reference to strictures on Mr.

Whalen? A. It would be impossible for me to have had that, Mr. Smyth, because this conversation which Miss Garrigues refers to occurred on October 22nd; the hearing before the High School Committee was held October 22nd; the resolutions are of the date of October 24th.

Q. But that subject was up and you knew it was going to be up before you had sent Miss Garrigues to the classroom; is not that so? A. I did not know that Mr. Schmalhausen had anything to do with it at all.

Q. Did you not know that Mr. Schmalhausen was among those who were agitating condemnation of the action of those members who had been instrumental in lengthening the school hours? A. My recollection is that for the first time I knew who were instrumental in any such agitation was on the afternoon of the 22nd, late in the afternoon.

Q. Is it not rather singular that you happened to light on the very day that this matter was coming up for your investigation of Mr. Schmalhausen, who was one of those who worded this resolution? A. It is not that. I did not light on it on that day. The matter was brought to my attention on October 19th.

Q. What was it they brought to your attention on the 19th? A. The matter of this assignment.

Q. Brought to your attention by whom? A. By a teacher in the De Witt Clinton High School.

Q. Who is the teacher? A. Aaron I. Dotey.

Q. That was on the 19th, you say? A. On the 19th.

Q. At that time, did you know that the Teachers' Council had taken up this subject of protesting against the action of Mr. Whalen? A. I do not recollect any such knowledge at that time.

Q. You do not? A. No, sir. I knew I was to be here on October 22nd, but I did not know that there was to be any action on the part of the Teachers' Council of the De Witt Clinton High School.

Q. Did you not know that Mr. Schmalhausen had already been appointed by the Teachers' Council to get up a protest against the lengthening of the day? A. My recollection of the first time that I knew he had anything to do with the protest as to the lengthened day was in this room on the afternoon of the 22nd, and I was requested to be here, by, I think, the Chairman of the School Committee. I was coming in my capacity as one of the principals who was required to be here, because the boys of the school were to be heard from.

Chairman Whalen: If it will help you at all, the public hearing which we gave to the boys and teachers, and in which Dr. Paul was present, was on the afternoon of the 22nd of October.

Mr. Smyth: Yes, I understand.

Chairman Whalen: That was held here in this room.

Mr. Smyth: I understood the actual meeting was held here in the afternoon, but Mr. Schmalhausen had already been selected to present the matter of protest against the lengthened day before that. That is the point, that he was singled out by Dr. Paul because of that fact, and his recollection of that may be as faulty as his recollection as to what he said, and Miss Garrigues says he said.

By Mr. Smyth:

Q. Now, with reference to this Herman letter, or Herman essay, you did not show Mr. Schmalhausen that letter on the occasion of your first

talk, did you? A. My talk with him? No, sir.

Q. Why did you not? A. The letter was not in my possession at that time.

Q. When was the occasion of your first interview with Mr. Schmalhausen? A. It was in the week beginning October 22nd, I think October 23rd, I put a card in his box, asking him to come to see me in my office as soon as it was convenient for him to do so, and he, I think,—I think a day or two went by before he came, and coming in toward noon on the latter date, toward the end of the week, I found a memorandum on my desk to the effect that he had tried several times to meet me, but had been unable to do so, so I sent for him at that moment.

Q. That was what day? A. I cannot tell you the exact date, but it was toward the end of the week.

Q. It was probably Friday, October 26th, was it not? A. It might have been.

Q. You had the Herman epistle then, did you? A. I did not.

Q. You did not have it then? A. No, sir.

Q. When did you have it? When was it handed to you? A. It was handed to me by Miss Garrigues on October 22nd.

Q. On October 22nd? A. On October 22nd.

Q. Then you had the Herman letter? A. At that time; yes.

Q. At the time Miss Garrigues handed it to you on the 22nd? A. Quite correct.

Q. Then you had it at the time that you had your first interview with Mr. Schmalhausen? A. I did not.

Q. What had you done with it? A. I had turned it over to Superintendent Tildsley.

Q. Was Superintendent Tildsley present at your interview with Mr. Schmalhausen on the 26th of October? A. He was not.

Q. When did you get that Herman letter back from Mr. Tildsley? A. Mr. Tildsley brought it back to the school on October 31st, I think.

Q. When did you see Mr. Schmalhausen? A. The latter part of the preceding week.

Q. When did you first see Schmalhausen after you obtained possession of that letter? A. The latter part of that week.

Q. And that was when? A. You have suggested October 26th. I am not positive of that.

Q. You said at that time you did not have the letter before you; you had turned it over to Dr. Tildsley? A. Quite correct. I have not said I had the letter still.

Q. When did you first see Mr. Schmalhausen after Dr. Tildsley had returned that letter to you? A. Dr. Tildsley presented the letter to Mr. Schmalhausen in my presence on October 31st, that is the first time I saw the letter after it went into Dr. Tildsley's hands.

Q. Was it returned to Mr. Schmalhausen with the opportunity to read it through on that occasion? A. On the first occasion only the first page was read.

Q. Who read the first page? A. Dr. Tildsley, as I recollect it.

Q. Why was not Mr. Schmalhausen not allowed to read the letter? A. You will have to ask Dr. Tildsley.

Q. There was no statement made of any reason? A. There was no statement made of the reason for withholding the letter.

Q. When the letter was finally shown to Mr. Schmalhausen in its entirety you knew then that that was the first time that Mr. Schmalhausen had ever seen the Herman epistle? A. Quite correct.

Q. He sat down and made these comments? A. No,

Q. Where did he write these annotations? A. He did not sit down and make those comments when he got the letter.

Q. Do you know where it was that he made those comments? A. Yes, he made those comments in the office, the High School office at the extreme end of the interview, at the close of the interview.

Q. That was when the letter was handed to him for the purpose of criticising? A. That was when Dr. Tildsley, after hearing from Mr. Schmalhausen that the sentiments might be offered three times in succession, said to him, "Well, what changes would you make or what criticisms would you offer?" That was at the close of the interview.

Q. Then he put his criticisms in writing? A. He put them on the letter as they are now.

Q. Do you say that the written criticisms differ from his oral criticism? A. I feel that they did.

Q. What? A. I feel that they do.

Q. The written criticisms, of course, are not open to any question of faulty recollection, are they? A. No.

Q. What? A. No.

Q. They were made right there at that time, at that interview, were they not? A. They were.

Q. It is rather singular, is it not, that at the same interview he is reported to have made verbal criticisms which do not compare at all with his written criticisms? A. I beg your pardon, I did not say he made verbal criticisms.

Q. Did he say that he approved of the letter? A. I say that he said—

Q. No, answer that. A. In effect he approved of the letter's sentiments.

Q. Did he say "I approve of the sentiments of that letter"? A. He said that "I would be perfectly satisfied—"

Q. No, answer that. A. Did he say personally whether he approved of the sentiments of the letter?

Q. Yes. A. I cannot recollect that he did.

Q. His written comment was disapproval, was it not? A. His written comment was disapproval of the form and detail.

Q. Do you consider it a disapproval of form and detail when he says that the writer was irrational and insane, and he finally ends up by asking him "Why did he write this." Do you consider that a matter of form or a matter of substance? A. I feel that—

Q. Answer that. A. That is a suggestion that the substance is in question.

Q. The substance is in question? A. Yes.

Q. Then we have it that when we get something that we can absolutely put our finger on, the writing of Mr. Schmalhausen, that he disapproves of the substance of the letter, and it is only your recollection which may be faulty as to what his oral comments were. Is that so? A. He made no—

Q. Is that so, as I put it? A. He made no oral comments. I suggest that you frame it without the suggestion oral comments.

Q. He made no oral comments? A. Verbal corrections.

Q. Didn't you say a little while ago that his oral comments were affirming the sentiments of the letter? A. I said that he said that without change of sentiment he would permit that letter to be read three times in succession, or one like it.

Q. Are you entirely correct about that? A. Absolutely.

Q. Is not what occurred on that occasion in this wise: Did not he suggest that Mr. Herman was a boy of a good deal of intelligence, and that if the

letter were properly criticised it would be a lesson to him which would make it permissible to let him write another essay, because that essay would be written in the light of criticism? A. He said nothing of the kind, sir.

Q. Are you absolutely positive; do you say that positively? A. Positively. I will tell you why I am positive of that.

Q. Unless it was something that was said I object to that, to your opinion. A. It was something that was said.

Q. What did you say? A. He was asked, "Would you consider a boy writing such a letter and continuing to write such letters worthy of a diploma from this school?" and he said "Yes."

Q. Can you reconcile that statement of his with what he wrote right at the same interview, that the boy was irrational and insane in writing such a letter as that? A. Well—

Q. What? A. I cannot undertake the obligation of reconciling his acts.

Q. Is it not true, Dr. Paul, that when you asked the question, "What did he think of the rights of that boy to receive a diploma from this high school," at that time you were not—was not that a question by Dr. Tildsley? A. I think that was Dr. Tildsley's question.

Q. It was not yours at all? A. No, sir.

Q. At that time there was no specific reference made to the boy Herman, was there? A. Certainly, the boy in question was Herman.

Q. Did not Mr. Schmalhausen reply in substance, that I suggest we find out as much as we can find about that boy's previous record, from his several teachers, and the markings of his previous several terms all go to show that he is an unsatisfactory student, a fellow who has not any capacity for showing respect or courtesy, then I should say he deserves to be dealt with rather

seriously, though at this moment I am not prepared to say what specific punishment be meted out? A. I remember no such detailed or lengthy answer.

Q. Did he say in substance or effect, that? A. No, sir.

Q. Did he say nothing of what I have read? A. No, sir.

Q. You deny that categorically? A. I deny it categorically. He said, "I would be in favor of giving him his diploma," or words to that effect.

Q. I heard you. You have said that several times. Did he not say that in fairness to the boy you should consult all his teachers and all his past records, and that you must remember that the boy may have twenty or thirty or forty years more in which to develop intellectually and spiritually; cannot we afford to assume that he will improve in these respects, which you find fault with? A. I do not recollect any such statement.

Q. Do you now deny that he made any such statement as that? A. I deny it.

Mr. Mayer: Will you speak loud so all the Committee may hear you?

Q. Do you know the record that this boy Herman had up to that time according to the school? A. No.

Q. Have you looked it up at all? A. Yes.

Q. And what have you found his record to be? A. It is a good record.

Q. A good record in all respects? A. In most of them. I have his record card here.

Q. Will you produce it? A. There it is.

Mr. Smyth: I offer in evidence the record of Hyman Herman.

Mr. Mayer: No objection.

The paper was received in evidence and marked Exhibit A of this date.

By Mr. Smyth:

Q. This record of Hyman Herman indicates an exceedingly intelligent chap, does it not; for his age it is a pretty good record? A. It does.

Q. And it indicates that with an intellect such as he apparently had, that with proper training and proper comment, pointing out errors, that he would be an apt pupil? A. It does show that if the teacher used due influence on the boy he would be both an apt pupil and a splendid citizen.

Q. So that if this essay had been presented before that in class to Mr. Schmalhausen and he had had the opportunity of criticising, as he had according to his marginal notations, you would have great hopes that the next time the boy was called upon to address that particular subject it would be in an entirely different vein, would you not? A. I have not only hope but knowledge that the boy has under the control and direction of another teacher seen the mistake that he made in writing that letter.

Q. Did this other teacher follow the annotations of Mr. Schmalhausen in criticising that essay? A. The other teacher did not discuss that essay *per se*.

Q. I see. A. The other teacher presented to the boy a better understanding of the German Government, according to the boy's statement to me.

Q. No opportunity was given to Mr. Schmalhausen to present any idea of the German Government to this boy, was there? A. Not as I know of.

Q. None that you know of. In fact he was suspended before there was any opportunity for him to do anything about the matter further than write the annotations in your office? What? A. That is correct.

Q. Have you investigated the list of assignments given to Mr. Schmalhausen's class from the opening of the school to the 12th of November?

Mr. Mayer: I object to that as immaterial and irrelevant.

A. Yes.

Mr. Smyth: It is to show that this is the first political assignment that there had been.

The Witness: Mr. Schmalhausen—

Chairman Whalen: Wait, wait.

Mr. Mayer: Wait.

Chairman Whalen: If you go into that there will be no end to it.

Mr. Smyth: I do not think so. This gentleman is accused apparently of trying to conduct his class in such a way that lack of patriotism was taught. I wish to show—

Chairman Whalen: It is shown by your letter which you have read.

Mr. Smyth: I wish to show that all the assignments from the time the school was opened to the time of the writing of the letter and beyond were assignments which had to do with literary subjects and none of them were political.

Chairman Whalen: He is only accused of giving out this assignment. No, he either did or he did not.

Mr. Smyth: Accused of giving out this assignment?

Mr. Mayer: And failing to make proper corrections of the letter.

Chairman Whalen: That is it.

Mr. Smyth: My friend says "failing to make proper corrections." I do not see how that can be included in that, considering that the letter was never given to Mr. Schmalhausen under circumstances where he was permitted to correct it.

Chairman Whalen: You brought that out.

Mr. McIntyre: You said he made more ex-

tensive corrections on that letter in the office than he would have made in the classroom.

Mr. Mayer: We will bring that out.

Chairman Whalen: Mr. Smyth has brought that out.

Mr. Smyth: What?

Chairman Whalen: You brought out the fact that he made these notes on the letter, and the letter and comments speak for themselves.

Mr. McIntyre: May I interrupt at this point, Mr. Chairman? I think it ought to be pointed out to the Committee that the essence of the criticism made of the action of Mr. Schmalhausen is that he failed to make such criticism of the contents and the substance and the spirit of that letter as would lead that boy to see that he was wrong to write such a letter.

Mr. Smyth: I am perfectly willing to meet that, and say that the answer is contained in the written annotations contained in the letter. If that is all there is of this inquiry we ought to stop right here.

Mr. McIntyre: No, the letter speaks for itself.

Chairman Whalen: We had better not get into any argument now. We are taking proof. After the proof is all in and the case is closed we will give you an opportunity of summing it up.

Mr. McIntyre: I did not mean to interrupt, and I thought that perhaps we might get back to the issue again.

Chairman Whalen: Have you finished Mr. Smyth?

By Mr. Smyth:

Q. The idea of getting these written criticisms from Mr. Schmalhausen was to obtain from him what his idea of the letter was, was it not? A. Dr. Tildsley referred to that.

Q. You expressed no idea? A. I have expressed only the statement that Dr. Tildsley—

Q. Unless it was said to Mr. Schmalhausen I have not asked for it. If it was said in Mr. Schmalhausen's presence you may state it? A. It was stated in Mr. Schmalhausen's presence.

Q. What was it Dr. Tildsley said in Mr. Schmalhausen's presence? A. "What criticisms would you offer to this letter."

Q. Is that all he said? A. That is practically all I recollect.

Q. Then he sat down and wrote these criticisms which have been read? A. He asked for time and Dr. Tildsley said "You may have it." Dr. Tildsley and I left the room and when we came back he offered this paper to Dr. Tildsley with these marginal notes.

Q. How long were you out of the room? A. About fifteen minutes.

Mr. Smyth: That is all.

Redirect examination by Mr. Mayer:

Q. Dr. Paul, you have read these pencil comments of Mr. Schmalhausen? A. I have not.

Q. Dr. Paul, during the conversation that you had or that Dr. Tildsley had with Mr. Schmalhausen in your presence, did Mr. Schmalhausen at any time condemn the contents and substance of that letter? A. He did not.

Mr. Smyth: I object to that. The annotations speak for themselves.

Chairman Whalen: Yes.

Mr. Smyth: I ask that the answer be stricken out.

Chairman Whalen: It is not important. The letter speaks for itself.

Mr. Mayer: Mr. Smyth, as I remember, has asked some questions to try to show that Mr. Schmalhausen did not comment on the letter in any way except through his criticisms. Now, I want to know did he comment on that letter orally, by condemning its substance.

Chairman Whalen: He answered the question, and it is of no importance. The letter speaks for itself. The next witness.

Mr. Mayer: Dr. Tildsley.

JOHN L. TILDSLEY, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. Mayer:

Q. Dr. Tildsley, are you one of the Superintendents of Public Instruction? A. I am an Associate Superintendent.

Q. Does DeWitt Clinton High School come under your supervision? A. It does; I have charge of all the high schools.

Q. Do you remember in or about the latter part of October, 1917, receiving from Dr. Paul, the principal of DeWitt Clinton High School, this letter marked Exhibit 6 and this assignment marked Exhibit 5? A. Yes; he brought it to my office just before we came down to the hearing on the high school students on the afternoon of October 22nd, and said "This is a matter that I think requires your attention."

Q. Then what did you do with those papers? A. I put them away in my desk at that time and told him that I would come over and look into the matter as soon as I possibly could.

Q. And then what occurred? A. Immediately following we had the hearing that afternoon, and then there was a strike of the high school boys, and the remainder of that week was taken up with interviews with boys, finding out why they struck, and following that action in the DeWitt Clinton High School, and the High School of Commerce, so it was not until October 31st, I was able to do anything in the matter. I put the letter in my pocket on October 31st, rather the night before, and came down to DeWitt Clinton High School on the morning of October 31st.

Q. Then what did you do at De Witt Clinton High School on that day and where was it done, and who were present? A. I came there and told Mr. Paul that I had two different matters which I wished to look into; one was the question of the resolutions passed in the name of the Teachers' Council and another one was the matter of this letter which was written in Mr. Schmalhausen's class.

Q. Coming down to the letter, where was that taken up in the school? A. That was taken up in the evening school office.

Q. Who were present on that occasion? A. Dr. Paul.

Q. And was Mr. Schmalhausen? A. Mr. Schmalhausen; yes.

Q. Now, tell us, Dr. Tildsley, as near as you can remember, the conversation with regard to this letter which you had with Mr. Schmalhausen in Dr. Paul's presence on that occasion? A. May I say that the interview did not start with the discussion of this letter. There were two things that I wanted to find out about, and I think it might clear up things for me to state that if you are willing.

Q. Was Mr. Schmalhausen present? A. Mr. Schmalhausen was present.

Q. Tell the conversation as it actually occurred? A. Going back to October 31st, the first day I appeared there, Mr. Samuel Schmalhausen was one of the men I wished to see, but he came in about half past two or three in the afternoon and asked if he could as well see me another day, because I think he had an appointment and I said "No hurry. It will do as well the next day."

Q. That was the 31st of October? A. That was the 31st of October. So I came the next day, on the 1st of November, and Mr. Schmalhausen

was called in the office and we began our interview first by taking up the question of the resolutions. I wanted to find out why they were passed, and what the significance was. After we had discussed them at some length it brought up the whole matter of what Mr. Schmalhausen thought of the form of democratic control in the schools. We thrashed that out quite fully, as to what they meant by the phrasing of the resolution. Having finished that subject I then took up the question of this letter, and I said, "I have here a letter, Mr. Schmalhausen, given to me by Dr. Paul, and I would like to read you some of it," and so I read him the first page and asked him what comment he had to make upon it, and he said he had no comment to make upon the substance of the first page; he might have made some mechanical mistakes. Then I asked him the question about the assignment, whether he thought it was a wise assignment, calling his attention especially to the term "frank," and that brought up the question of the nature of the assignment, its wisdom, and then I took up the question of the heading.

Q. What did he say? A. He said he thought it was a proper assignment. The second point was the heading. The heading was "Woodrow Wilson," and I asked him whether that was a proper heading for a boy to use in addressing a letter to the President of the United States and he said he thought it was. I said "You mean then it would be proper for a boy to address the President of the United States just as he might address his next door neighbor, John Brown?" and he said he did think so. I said "Don't you think boys ought to be taught respect for the President of the United States?" and he said he did not believe it was the duty of the teacher to inculcate a respect for the President of the

United States as such. Then I asked him just what he meant by that, and he said he meant instinctive respect. We discussed the difference between reflective respect and distinctive respect, and he did believe the boy should have reflective respect for the President of the United States. I asked him what he meant by that, and he said that in so far as the President of the United States, as an individual, was deserving of respect because of what the boy knew of his acts, and his life, the boy was bound to accord him respect, but he was not bound to accord respect to the President as such. Then I asked him whether he did not think it was the duty of a teacher in a public high school to inculcate in his pupils respect for the President of the United States as such, the Governor of the State as such, the Mayor of the City as such, and the President of the Board of Education as such, and he said it was not a duty of the teachers so to do.

Q. Anything further? A. Those were the important things brought out in that interview. It was a long interview, because we went quite thoroughly into this question of respect, and the duty of a teacher in these matters.

Q. That was the substance? A. That was the substance of our interview the first day. By that time it was lunch time and we adjourned at that time.

Q. Until when? A. I mean I excused Mr. Schmalhausen at that time, and I saw someone else, if I remember correctly afterward. I am not sure whether on that day. Then after thinking it over afterward I said "Mr. Schmalhausen" to myself, "did not have a chance to read that whole letter; I should have allowed him to read it", so the first thing the next morning, I asked to have Mr. Schmalhausen come to the office, and then I said to Mr. Schmalhausen "I read you only the

first page. You have not read that letter. Will you kindly take that letter and read it through?" and he took the letter and read it.

Chairman Whalen: Who was present the next day?

By Mr. Mayer:

Q. Who was present on the next occasion?

A. There was present on the next occasion in Mr. Paul's office, Mr. Paul, Mr. Anthony, Mr. Margolies, who was sitting at a neighboring desk, and myself. These were the people who were actually present at the interview. The door was open and people came in and out, but they were not concerned in the affair.

Q. Now, will you tell, as nearly as you can recollect it, the interview between yourself and Mr. Schmalhausen on that occasion? A. On this occasion we renewed our discussion on this question of respect.

Q. After he had read the letter or before? A. After he had read the letter, because the first thing when I came into the office, as I remember it, I asked him to read the letter, because I felt that he could not discuss that letter unless he read it, and so he took his time and read the letter, and then we discussed the letter and I asked him in this interview whether he would allow a boy to read this letter in class, and he said he would. Now, I said, "If the boy made no correction in the sentiment of this letter, would you allow him to read the same letter the next week," and he said "Yes." And I said "Would you allow him to read a similar letter the third week?" and he said "Yes." In other words I said "You would allow such a boy to read such a letter again and again in class," and he said "Yes." Then he said "This is no doll's house; I believe in free expression." I said, "Do you not

think the reading of such a letter would endanger the other boys in the class"? And he said he did not think it would.

Then I asked him to take the letter and make corrections as he would have made in the letter had it been handed in to him in the regular course, and I walked out of the room with Dr. Paul so as to leave him there and he sat at the desk and wrote, and we were out of the room fifteen or twenty minutes, and then we came in and he handed it back to me with the statement, "You will understand that the corrections on this letter are much more minute than I would ordinarily have made", and I looked over the corrections on the letter, and the letter has been in the possession of the counsel ever since.

Q. Until it was put in evidence here today?

A. Yes.

Q. Now, Dr. Tildsley, how long have you been connected with public instruction in the schools of the City of New York? A. This is my twentieth year.

Q. During that time have you made an intimate study of the principles and theories of teaching? A. I think I have. I have been in four different high schools.

Q. You have been a teacher in schools? A. I have been a teacher of Latin and History and Economics.

Q. Do you remember the evidence of Dr. Paul that the boys in that school run in age from thirteen to nineteen years? A. Yes, sir.

Q. Have you observed the mental tendencies of young boys of that age? A. I have.

Q. What in your opinion are the mental tendencies of boys of that age?

Mr. Smyth: I object to that unless it is confined to the class that Mr. Schmalhausen had to do with.

Q. Confining yourself to boys under or about seventeen years of age, in Mr. Schmalhausen's class.

Mr. Smyth: He has not yet said he observed the boys in Mr. Schmalhausen's class.

A. I have not observed the boys in Mr. Schmalhausen's class naturally.

Q. Boys of seventeen years of age? A. I have.

Q. Now, let me ask that question? (Question read).

Mr. Smyth: I make the same objection.

Chairman Whalen: If they were seventeen years of age that answers.

Mr. Smyth: No, unless it is shown that all boys of seventeen years of age are the same as boys of seventeen years of age in Mr. Schmalhausen's class, certainly it would not be a competent question.

Chairman Whalen: That is what he is asking about.

Mr. Mayer: That is what I am asking about, boys of that age generally.

Mr. Smyth: He says he has not observed these boys. It cannot be that you will take judicial notice of all boys of seventeen being the same whether they are identified or not.

Mr. Mayer: The witness is speaking as an expert who has made an intimate study of the theory and principles of teaching.

Chairman Whalen: He can answer. He speaks generally of boys of seventeen years of age.

Mr. Smyth: Is there any general tendency of all boys of seventeen years of age?

Chairman Whalen: I do not know.

Mr. Mayer: There is a general tendency unless Mr. Smyth's boys are abnormal.

Mr. Smyth: There is one general tendency I have noticed, and that is that they like to enjoy themselves. Some are industrious and some

are not; some are good and some are bad; some are truthful and some are not. I do not think there is any general tendency of boys of seventeen except generally that they try to be good.

Mr. Mayer: Intellectual tendency is what I am asking for.

Mr. Smyth: I cannot see where we get anywhere with any generalizations unless my client is identified with the boys whom Dr. Tildsley observed, and he can only do that by seeing them, and he says he has not seen them, that he has not observed these boys.

Chairman Whalen: He says he is going to include yours.

Mr. Smyth: He says he has not observed them. He has not observed Mr. Schmalhausen's boys.

The Witness: Not these particular boys of Mr. Schmalhausen's.

Mr. Mayer: Now, will the stenographer go back and ask that question again, having reference to the boys in Mr. Schmalhausen's room?

Mr. Smyth: Does your Honor overrule the objection?

Chairman Whalen: Yes, I overrule it.

Mr. Smyth: Then I take an exception.

By Mr. Mayer:

Q. What has been your observation with regard to the mental tendencies of boys of the age of seventeen years old generally?

Mr. Smyth: To that I make the same objection as to its competency.

Chairman Whalen: Objection overruled.

Mr. Smyth: Exception.

A. The question, as the attorney states, is a very general question, and all boys are not alike. Boys in different parts of the country are different, but I have been a very close observer of the type in DeWitt Clinton High School, because I

was in that school six years and I think I know that type of boy very well, and added to that I had to do with the same type of boy in the High School of Commerce for two years, and he has very much the same characteristics. At DeWitt Clinton High School the boys at the present time are probably eighty per cent, either the first or second generation, of foreign birth, and they have some very decided interests; they are very much interested in the social life and the political life of this city; they are exceedingly fond of discussion, and they have developed a rather high degree of critical ability and critical tendency, and the only thing that they like more than anything else I should say, is a discussion on social, political and economical topics; they are more interested in that than they are in being good or even than they are in athletics.

Q. Now, Dr. Tildsley, what effect on the minds of such boys as those that you have just spoken of, and particularly the boys of seventeen years of age as the boys who are in Mr. Schmalhausen's class, would such a letter as that read in class have?

Mr. Smyth: That I object to, as immaterial, irrelevant and incompetent.

Chairman Whalen: Objection overruled.

Mr. Smyth: Exception.

A. It is my opinion that a letter such as that would have a very serious effect on the boys in that class. I believe that the evidence of the best authorities on psychology is to that effect. The boys of seventeen years of age in the DeWitt Clinton High School, as I have known them for a good many years now, at that particular age have a tendency to criticise governmental authority, and if a letter of that kind is read in class, unless it is most severely criticised by the teacher and condemned as being wrong, would

encourage other boys to write such letters. This is not a mere theorizing on my part, but I have talked with the boy who wrote this letter, namely, Herman, who came to my office, and I asked him whether he would have written such a letter in the case of another teacher named Loughlin, and he said he would not.

Mr. Smyth: I object to this conversation.

Chairman Whalen: Yes.

Mr. Smyth: I move to strike it out.

Chairman Whalen: Yes.

The Witness: This has a bearing.

By Mr. Mayer:

Q. What effect on such minds would such a letter as this have if read twice or three times without comment? A. I believe it would influence—

Mr. Smyth: I object to that, if your Honor please. It is eminently unfair to say, "without comment," because here are the comments.

Mr. Mayer: I will amend my question.

Q. (Continued): With such comments as these here which are placed in the margin?

Chairman Whalen: With the comments.

Mr. Mayer: With the comments.

Mr. Smyth: That I object to as speculative.

Chairman Whalen: There cannot be any objection to that. Go ahead and answer.

Mr. Smyth: Exception.

A. I have read these comments very carefully three or four times on that letter, and in my judgment there is no condemnation of the writer of this letter as having done a seditious, immoral act. There is a technical criticism of certain phrases; he calls attention to the fact that certain statements are exaggerated. In one place he says the particular statement in which the President is called a murderer is an insane state-

ment, but nowhere is there any statement that the act of the boy in writing the letter is altogether an immoral act. There is not a single sign of moral abhorrence on the part of the teacher who criticised that paper, nor is there any indication to the boy that he has done anything essentially wrong. The criticism is for the most part a technical criticism. In my judgment a letter of that kind should not have been criticised in detail at all. The teacher could have seen at the first glance the spirit of the boy and attitude of the boy, and should have refused to accept such a letter at all, and should have simply written on it a general criticism that this letter shows an absolutely wrong attitude on the part of the boy, that it is essentially seditious and immoral, and then he should have called the boy into his presence and explained that to him and convinced him of that fact.

Q. Now, Dr. Tildsley, you say that such a letter criticised as this letter has been if read repeatedly in the class would have a bad effect upon the minds of the students of that class?

Mr. Smyth: Same objection.

Chairman Whalen: Yes, he has said that.

A. Most decidedly.

Mr. Mayer: That is all.

Cross examination by Mr. Smyth:

Q. Do you not think it is general criticism where in one comment he says: "For a thoughtful student this statement sounds irrational," and in another "That it is insane," and finally at the end of the letter he asks: "Why did you write this?" Is not that, even from those few comments I have read, does not that indicate that was in general condemnation of the letter? A. No, sir.

Q. It does not? A. No, sir.

Q. You would not admit anything was a general condemnation would you? A. I would.

Q. You are prejudiced anyway against Mr. Schmalhausen are you not? A. I am not, not in the sense you ask the question.

Q. Did you not at one time admit to a certain gentleman that this boy you were convinced did not mean what he said; that he had picked up these phrases somewhere in some lurid journal? A. I have no recollection of such an admission.

Q. Did you ever state that to Mr. Jablonower? A. I have no recollection of whether I did or did not.

Q. You would not deny that you did, would you? A. I will not deny it; I have no recollection whatever of the conversation.

Q. Speaking of your own record, Dr. Tildsley, do you know Mr. Schmalhausen's record in the school? A. I know of his record when I was the principal of that school.

Mr. Smyth: I suppose the committee will take notice of its own records of the Board of Education.

Chairman Whalen: Yes.

Q. When you were called upon to give any report on Mr. Schmalhausen's record your report was always in his favor, was it not? A. Yes, on the whole it always was.

Q. For instance you wrote on one occasion, December 22, 1914, did you not: "Mr. Schmalhausen is scholarly, energetic, persistent, with a great enthusiasm for boys, and for teaching, his ideals are high, and he has the missionary spirit, he is a valuable teacher, if not always tactful"; do you remember writing that? A. Yes, sir, I remember that.

Q. That you believed to be true at that time? A. Yes, sir.

Mr. Smyth: I will now offer all the records

of the Board of Education with reference to Mr. Schmalhausen.

Chairman Whalen: All right.

Mr. Smyth: Whether made by Dr. Tildsley or by whomsoever made.

Chairman Whalen: Very well, Dr. Paul?

Mr. Smyth: Dr. Paul or whoever made them.

By Mr. Smyth:

Q. When you had the first interview with Mr. Schmalhausen do you recollect the opening topic of your interview? A. The opening topic of our first interview was the discussion of the resolution passed by the Teachers' Council.

Q. Why was that particular topic brought up first? A. Because Mr. Schmalhausen was, if I am not mistaken, a member of the Teachers' Council of that school, and I interviewed first Mr. Pickelsky, the Chairman of the Council, and Mr. Pickelsky told me that Mr. Schneer handed him the resolution, and so I interviewed Mr. Schneer and then afterwards several members of the Council. I told you I had two aims in going to that school.

Q. You were at the time engaged in trying to fasten responsibility for the resolution that had been passed on the evening of the 22nd of October when you had those interviews with Mr. Schmalhausen? A. I was trying to find out what was meant by the resolutions and why they were passed.

Q. You were also trying to find out who had been instrumental in drawing them up and who had presented them? A. I asked those questions; yes, sir.

Q. Those were the first questions you asked? A. Not the first questions.

Q. They were among the first? A. Among the first; yes, sir.

Q. They were before you came to the Herman matter at all? A. We had finished this matter before we took the Herman matter up.

Q. Who had asked you to inquire as to the authorship of the resolution and who acted in passing that resolution? A. Nobody had asked me.

Q. Was it on your own initiative? A. It was on my own initiative because it lay within the sphere of my duty.

Q. Did you report the result of that interview? A. I have made no formal report of that interview to anyone yet because I have not finished with the matter.

Q. To whom did you make any informal or any preliminary report, or to whom did you tell what the result of your conversation was? A. I talked with the Board of Superintendents about it.

Q. Who else? A. I do not remember; I talked to President Willcox—I do not remember whether I talked to President Willcox before or after I had made the investigation, but I have not made any report on that investigation as yet.

Q. You have spoken to Chairman Whalen about it? A. Probably I have; yes, sir.

Q. Probably? Have you no recollection about it? A. I have no recollection of having made any formal report.

Q. I did not ask you for any formal report.

Chairman Whalen: I can say that to you, he has not done so to me.

Mr. Smyth: I did not say he had made any report.

Chairman Whalen: He has not discussed it with me.

The Witness: I have made no report of any kind to anyone.

Mr. Smyth: Do you mean he has not spoken to you, Mr. Chairman, about it?

Chairman Whalen: No.

Mr. Smyth: Given no information at all.

Chairman Whalen: Not about the resolution.

Mr. Smyth: About Mr. Schmalhausen's activity in the matter of the resolution.

The Witness: I do not believe that Mr. Schmalhausen's activity in the matter of these resolutions has ever been a subject of conversation between Mr. Whalen and myself. In fact I do not know what Mr. Schmalhausen's part in these resolutions was myself.

By Mr. Smyth:

Q. Was not that the first question you asked him? A. It was not the first question I asked him.

Q. What? A. It was not the first question I asked him, and I do not know what Mr. Schmalhausen's part was now.

Q. Did not you ask Mr. Schmalhausen whether he wrote those resolutions? A. I did.

Q. That was the first question you asked him? A. It was not the first question I asked him.

Q. The second or third or somewhere along there, after saying "How do you do"? A. I do not know whether Mr. Schmalhausen wrote the resolutions or not.

Q. You asked him didn't you? A. I did, sir.

Q. Didn't you get a reply? A. I do not remember what his reply was now, I do not know whether he wrote those resolutions.

Q. That was one of the important things you were inquiring about? A. It was not the most important.

Q. I did not say the most important, one of the important things? A. It was not the most important, or one of the most important who wrote the resolutions.

Q. What was the importance of asking who

wrote that resolution? A. I wanted to find out how that resolution came into being.

Q. Did you ask him to find out? A. I do not believe that I found that out, who wrote it.

Q. Did he not reply to you? A. I do not remember.

Q. If he had refused to reply surely you would remember that? A. I do not remember whether he refused to reply; I do not think he refused to reply, but at the same time I do not know who drew up these resolutions.

Q. Is it not singular that your memory is not clear? A. It may be singular, but that is the fact.

Q. You knew what I was going to ask you? A. I say this may be singular, but the fact is that I do not know who drew up these resolutions.

Q. What was I going to ask you? A. I do not know.

Q. Are you as careful about report conversations as you are in answering questions now? Have you got any clear recollection of these conversations? A. I have of many things.

Q. Can not you tell us the very first thing of the conversation, or the very first inquiry you made? A. No, I cannot; the reason is I have interviewed forty different people. The matter of this letter was much more important than Mr. Schmalhausen's connection with the resolution. I do not remember whether he made an answer to that specific question.

Q. I suppose the reason that the Herman letter was much more important than any other is the reason that you asked about the resolution first, and did not ask about the Herman letter first; is that it? A. I asked about the resolution first because I was getting that out of the way, and the important thing in my mind was the Herman letter, and Mr. Schmalhausen's ideas.

Q. I see. A. I found out there were one hundred at that meeting and that no record had been kept of the attendance during the meeting; therefore it was immaterial as to who the specific people were.

Q. Would it refresh your recollection as to what Mr. Schmalhausen replied to you when you asked, "Did you write that?" if I told you that he did write it? A. It would not refresh my recollection.

Q. You still say that you did not find out at the beginning that you had, or to use a phrase, the phrase of Dr. Paul, "I have got him, the man who wrote the resolution" and then you went to the Herman matter? A. It would not refresh my recollection to the slightest degree if you would make that statement.

Q. Do you deny that he admitted to you that he wrote the resolution? A. I do not deny it. I do not remember.

Q. At any rate, after having brushed aside that preliminary matter you went to the Herman letter? A. Yes, sir.

Q. You only showed him part of the Herman letter at that time? A. I did not show it to him. I read it to him.

Q. You read him what? A. I read him the first page.

Q. Why did you not show him the other pages? A. I read him the first page to get his reaction on the address and the general attitude of the boy in that letter.

Q. That is why you read the first page? A. Yes.

Q. My question is why you did not read the rest of it. A. The letter was a long letter and I did not take the time to read it.

Q. Was not it important? A. It was.

Q. It was important? A. It was important, as

was shown by the fact that I came the next morning and had him read it himself.

Q. Were you not trying to conceal the whole letter so as to get him to make a comment at the beginning which would perhaps seem peculiar if he had not read the whole letter? A. No, sir, because if I had been trying to catch the man I would have had him read the whole letter, for the worst part of the letter is found on the last page.

Q. Precisely. You wanted to get as favorable a comment as you could, reading the innocuous part, and then have that apply to the whole? A. The first page was not innocuous.

Q. More innocuous than the rest of it? A. Yes, sir, in my judgment.

Q. Now, you just admitted the worst part of the letter was at the end? A. The worst statement of the letter was at the end.

Q. You did not leave the worst part out to get as favorable a comment as you could for the first part, did you? A. No, sir.

Q. You think you were entirely fair with Mr. Schmalhausen? A. I think I was entirely fair; I was entirely fair. That was indicated by the fact that I came back the next morning and let him read the whole letter after that talk.

Q. Was not that after somebody told you you had better do that? A. No, sir, it was not. I talked with nobody about the case.

Q. Now, you started out on this inquiry with the thought in mind that the Herman letter was the most important thing that you had; is that right? A. No, sir.

Q. What is the most important thing that you had? A. I had three things in mind in the whole inquiry. Do you refer to the inquiry into Mr. Schmalhausen's case? That Herman letter was

the most important matter in the case of Mr. Schmalhausen, yes, sir.

Q. Was the matter of the Teachers' Council resolutions one of the important things? A. That was a very important thing; yes, sir.

Q. You took that up first? A. I took that up first; yes, sir.

Q. With Mr. Pickelsky? A. Yes, sir.

Q. And found that he had nothing to do with the resolution, did you not? A. I did not. I found that he presided at the meeting which passed the resolution.

Q. He had nothing to do with the resolution, with its authorship? A. He had nothing to do with its authorship he said.

Q. Nothing has been done with him. He still retains his position? A. He still retains his position.

Q. The next man you saw was Kenneth W. Wright? A. No, sir, it was not.

Q. Are you sure about that? A. I think the next man I saw was Mr. Schneer, if I am not mistaken.

Q. Was it not Mr. Kenneth W. Wright? A. I think he was not the next man. I saw Mr. Kenneth Wright the same morning I saw Mr. Schmalhausen and Mr. Pickelsky.

Q. You found out from Mr. Kenneth Wright that he did not vote for the resolution? A. Yes, sir, I did.

Q. He has not been interfered with; has he? A. He has not.

Q. The next man you interviewed was Mr. Charles Ham? A. I think so.

Q. You found he had voted for the resolution? A. Yes, sir.

Q. He is transferred? A. He is.

Q. And he is the first one. The next one you say Mr. Henry Schneer, was it not? A. I think so.

Q. You found that he had presented the resolution, did you not? A. I was told by Mr. Pickelsky he presented the resolution.

Q. He has been suspended? A. He refused to answer whether he had or not, so I do not know.

Q. He has been suspended? A. He has been suspended.

Q. You know he did present the resolution? A. I was told so by Mr. Pickelsky.

Q. The next man you saw was Mr. Schmalhausen? A. We saw one or two other people, but Mr. Schmalhausen was the next man I had any considerable interview with.

Q. You found that he wrote the resolution, did you not? A. I don't recollect now, whether he did or did not.

Q. He has been suspended? A. He has been suspended; yes, sir.

Q. Then you interviewed Mr. Mufson, did you not? A. I interviewed Mr. Mufson, not immediately, I believe, but within that—on the same day, that I interviewed Mr. Schmalhausen.

Q. You found he had voted for the resolution? A. I did not find Mr. Mufson had voted for the resolution.

Q. What did you find he had done? A. It will come out later, I believe.

Q. Cannot you tell me? A. Mr. Mufson is on charges before this body.

Q. All right. I am representing him. I will protect him. A. If the Chairman says I can answer that question I can answer it.

Chairman Whalen: You had better wait until his case comes up.

Mr. Smyth: I want to get the whole attitude of this gentleman.

Chairman Whalen: You have got it.

Mr. Smyth: I think I have and I want to complete it.

Mr. Mayer: I think this cross examination has been pursued far enough.

Chairman Whalen: Do not waste any more time on that, Mr. Smyth.

Mr. Smyth: All right, if your Honor is convinced as I am convinced, I will go to something else.

Chairman Whalen: Take up something else, now.

By Mr. Smyth:

Q. Now, Dr. Tildsley, this young man Herman is amenable to criticism; you have found that out have you not? A. Yes, sir.

Q. And if he were given this subject to write on again, without hesitation, you would allow his paper to be read, would you not? A. No, sir, I would not.

Q. Has not he shown an entire change since it has been explained to him? A. He has manifested an entire change by his work; yes.

Q. Would you be afraid now, to let him write on this topic? A. I would not allow anybody to write on this topic in school.

Q. You would not allow anybody to write on the topic to frankly comment on the President's conduct of the war against Germany? A. I would not.

Q. Do you read the newspapers? A. I do.

Q. Do you find any frank comment on that subject in patriotic newspapers? A. I do.

Q. Do you think the boys of seventeen years of age are not fit to frankly comment on such a thing that we are all reading every day? A. They are not as fit as they will be later in life.

Q. What age would you think that a growing youth or mature man should be to be permitted to frankly comment on the President's conduct of the war against Germany? A. The question in-

volved is not at what age a boy may do that, maybe, but at what age a boy in a school should be allowed to.

Q. Well, answer the question I have asked if you can, if you cannot, say you cannot? A. I cannot answer that question.

Q. You cannot answer? A. It depends upon the boy.

Q. Do you mean to say by that, that some boys of seventeen could be entrusted to write on the subject? A. Some boys of seventeen certainly could be entrusted to write on that subject.

Q. Is it your idea that to give such an assignment as was given here would tend to produce among the majority of the boys unpatriotic statements? A. It would give an opportunity for unpatriotic statements.

Q. I have not asked you that. Why not go the whole length and answer my question. Now read it, please.

Q. (Question read.) A. I am unable to answer that question whether it would or would not. The question is too general. Are you referring to the boys in Mr. Schmalhausen's class?

Q. Yes. We will take that. A. I believe that with a class of seven term boys going to the De Witt Clinton High School, that that assignment would not be a wise assignment.

Q. I have not asked you that. A. It would tend to cause some boys to make criticisms on the President of the United States, and those criticisms would not be good for the boys themselves.

Q. I have not asked you that. A. I have answered your question.

Q. You have answered something else. A. Possibly.

Q. That does not make any difference? A. Yes.

Q. Let me ask you again: Do you think that

such an assignment to a class of boys such as Mr. Schmalhausen had, would tend to produce among the majority of them some unpatriotic statements? A. I cannot answer that yes or no.

Q. Well. A. It would depend entirely on the boys' environment, and age they had reached and the teaching they had had.

Q. You were asked about the boys of seventeen, by Mr. McIntyre, and I am more specific in asking you about the boys in Mr. Schmalhausen's class, assuming they are the average of boys of seventeen.

Chairman Whalen: You might ask him about the boys of the De Witt Clinton High School.

Mr. Smyth: Yes, De Witt Clinton.

A. I do not believe that it would have that tendency with the majority of boys, but if it had that tendency with one boy I would not allow it and I believe it would have that tendency, as shown by the result.

Q. The object of an assignment of that kind is to get expressions of opinion which are worth while discussing; is not that so? A. Yes, sir.

Q. If all the boys, or rather, if all of the boys should write in the same vein and they were all satisfactory there would be nothing to discuss would there, there would be no lesson to learn and there would be no moral to point out, would there? A. It is always possible to point out a moral in a lesson; yes, sir.

Q. I mean if they were all the same, if they were all satisfactory, it would not give the same opportunity to the astute teacher as if the assignment called forth a letter which demanded criticism, and that would give the opportunity of showing to the rest of the class, to the delinquent himself, the error of his way, and would fasten the lesson on them more certainly than if they

were all to write in the same vein? Is not that so? A. Under some circumstances; yes.

Q. Then you do not think that really you are caviling when you say that there is any particular harm to come to a class because one boy writes a letter which if ignored is harmful, but which, if criticised, instead of being harmful becomes a theme for a salutary lesson? A. I am not caviling, for Herman has done himself a very deep wrong by writing that letter.

Q. And the very thing that I am trying to make, the point I am trying to make is this answer in Herman's case, because that attitude was found out by his answer to that assignment, and his ideas have been rectified? A. His ideas, in my judgment, have not been rectified.

Q. Have not you admitted that before? A. I have not.

Q. Did you hear Dr. Paul testify that his ideas now were entirely different than what they were? A. I am not responsible for what Dr. Paul says.

Q. Do you concur in what he says? A. I do not.

Q. You do not agree? A. No.

Q. With Dr. Paul? A. I do not agree with Dr. Paul; no.

Q. Do you not think that growing youths learn more from having errors pointed out than from going along where there is no chance for their errors to become manifest? A. I do not.

Q. You think a boy is safer going along without any chance to have his errors rectified, although they may be latent in him, than if he is given an opportunity to come out with what is in his mind and have those ideas shown to be wrong? A. Your question is too general to be answered in that way.

Q. Do you agree with it generally, with the

sentiment expressed in the question? A. You will have to be more specific in your question if you want me to answer. You are on a very question there as regards the proper fundamental thing in the training of children.

Q. And I have in mind exactly what you said about De Witt Clinton High School boys, that they thought more of economic matters than they do of having a good time. Is it not just that class of youth that an opportunity should be given to by such an assignment as that to bring out what is in their minds in order that if they express themselves erroneously they may be corrected? A. By such an assignment as that; no, sir. There are some things in the world that are sacred and there are some things that boys should not express themselves freely upon in the classroom.

Q. You do not seem to catch the point I am trying to make? A. Oh, yes, I do.

Q. You do not agree with it, anyway, do you; you think it is better to let a boy have wrong ideas in his mind obtained through outside environment, than to come to the De Witt Clinton High School and be given an assignment which will disclose his error and correct it? A. There are plenty of other ways of getting at boys with wrong ideas than by inviting them to criticise the President of the United States.

Q. That boy had it in his mind before the assignment came out; he must have had it in his mind before the assignment came out, of disloyalty to the President of the United States; and how would you have corrected that in Herman's case? Not knowing his sentiments? A. I would correct it in my own work by building up in my classes a sentiment of respect for the President of the United States which would have affected him.

Q. And if he had never shown what was in his mind you never would have directed your teaching to him specifically as you would if he had shown, as he has in this letter, what was in his mind? A. I would have known certain tendencies in the boys of that class and would have tried to correct them, not by giving an assignment of that kind, but by an assignment which would bring out a patriotic feeling of honest comment and patriotic feeling toward the President of the United States and other people of authority.

Q. Is it not so that the example of punishment generally is the thing that really teaches people generally to respect law and order and to understand it? A. No, sir.

Q. Then you do not believe in punishment? A. I certainly do.

Q. You do not believe in individual criticism of this boy but rather in general statements, hoping that those general statements find lodgment? A. Not at all. I do believe in individual criticism of a boy.

Q. How could you better criticize a boy than by giving him a chance to show what erroneous ideas he has and then correct them? A. I could get at his erroneous ideas in other ways than by that particular assignment. There are some assignments in the world that are not proper for a classroom in a public school, and this is one of them.

Q. That is to say, that you think it is unsafe for De Witt Clinton High School children to frankly comment upon the attitude of the President of the United States in conducting the war against Germany? A. Yes, sir.

Q. Although the answers to such assignment in the great majority of cases, according to Miss

Garrigues's testimony, are to bring out patriotic essays from the students? A. Yes, sir, I still maintain that.

Q. You still maintain that? A. I do.

Q. And notwithstanding the fact this particular assignment has afforded Dr. Paul, or whoever took Herman in hand, the opportunity of making a convert of that particular recalcitrant person, or that particular person, wrong-thinking person? A. If I had Herman in my class I would have discovered his attitude without giving him an assignment of that kind. I have taught such boys for years and never had an experience of that kind.

Q. Did you ever find out about any mental attitude of such a boy as that without giving him an opportunity to prove it? A. A boy of that kind is constantly expressing himself without being invited to criticise the President of the United States.

Q. Have you any instance in mind? A. Yes, this particular boy Herman said in Mr. Lapolla's classes that he had two terms under Mr. Lapolla, who allowed the boys to say anything they saw fit. I said if you had not been allowed to do that in that case would you have written this letter, and he said that it was never called to his attention that it was not proper to write such letters.

Q. When it was called to his attention he mended his ways? A. Not at all.

Q. He did not mend his ways? A. No, but because it was called to his attention.

Q. That was the point of his remarks to you? A. Not at all.

Q. What was the point of his remark? A. He mended his ways, according to Dr. Paul, because the teacher convinced him that Germany was an autocracy; feeling Germany to-day was an au-

ocracy, he said, the President of the United States was right in carrying on the war, and beginning the war, and as long as the President of the United States was right in beginning the war he therefore was wrong in writing such a letter about it. He changed his attitude toward the President of the United States because of that teaching of the teacher of history, and therefore he felt it was wrong to say such a thing to the President when the President agreed with him.

Q. Do you believe that it is right to let boys of this age in the De Witt Clinton High School write the negative on this topic: "We seek no selfish ends in this world"? A. I would not give that topic to the boys of De Witt Clinton High School in war times.

Q. Would you consider it proper to allow students to write an essay on the negative of this proposition: "Conscription is justifiable under a Democracy"? A. Not when conscription had been adopted by the Government as its policy, I would not allow the boys to write an essay on that subject in the De Witt Clinton High School.

Q. Would you think that it was proper to permit boys of this High School to write an essay on the subject of "Revenue by bond issue or taxation"? A. Not during the sale of bonds.

Q. Did you know that those things that I have called your attention to were in the examination papers of the De Witt Clinton High School given last week? A. I am not responsible for those papers.

Mr. Smyth: I offer in evidence the examination papers of November, 1917, English, 8th Term.

Mr. Mayer: I object to them as immaterial and irrelevant.

Mr. Smyth: This is certainly relevant. It shows this was a topic which was not as dan-

gerous as the topics which were asked about in examination.

Chairman Whalen: All right. It may be admitted.

Mr. Mayer: We have not admitted those sentiments were in the examination papers and there is no evidence here that they are.

Mr. Smyth: If they are taken from the official papers. Dr. Paul, they are the official papers, are they not?

Mr. Paul: Those are the official papers, with the approval of Miss Garrigues of the English Department.

The paper was received in evidence and marked Exhibit B of this date.

Mr. Smyth: I wish to read into the record so that the Committee will have it briefly before them, that in the examination papers November, 1917, the De Witt Clinton High School, the following four: A B

“A. Write the brief proper only of an argument on one of the following topics, either affirmative or negative? We seek no selfish ends in this war. Conscription is justifiable in a democracy.”

“B. Develop one of the issues into a paragraph.”

That was for the Eighth Term.

The Seventh Term.

“Five. A B.

“A. Write a resolution on one of the topics given below.

“B. Write in outline from the brief proper.

1. Strikes. 2. Revenue by bond issue or taxation. 3. Reading of current magazine picture.”

By Mr. Smyth:

Q. You had a long interview with young Herman, did you not? A. Yes, at some length.

Q. Some five hours in length? A. Oh, not at all.

Q. Altogether? A. No, sir.

Q. Was it all in one interview? A. With Herman?

Q. Yes. A. I had an interview with him in my office. He came here to see me, and I had an interview.

Q. Only one? A. He was here more than once. There was only one that could be considered as an interview, if that is the one you refer to. He was here. I saw him myself and took him down to Dr. Straubenmuller.

Q. Did not you in that interview with him ask him if it was not Mr. Schmalhausen who had inspired the sentiments that he wrote in that essay? A. I asked some form of that question.

Q. The form of the question, was it not like this: You know Mr. Schmalhausen is the one who inspired those sentiments, was it not? A. It was not.

Q. In substance? A. Not in substance anything like that.

Q. Didn't you try to lead him into saying that? A. I did not.

Q. Didn't he refuse to say Mr. Schmalhausen had had anything to do with those sentiments?

A. There was never any charge made by anyone that Mr. Schmalhausen had inspired the sentiments.

Q. You are not answering my question: Did not young Herman say it was not Mr. Schmalhausen who had inspired such sentiments, and that he had nothing to do with it? A. Yes, he did.

Mr. Smyth: Thank you. That is all.

Mr. Mayer: Mr. Anthony.

Chairman Whalen: Have you any more witnesses?

Mr. Mayer: We have only one more witness.

Mr. Smyth: What is the Chair going to do with regard to sessions?

Chairman Whalen: We will finish this case and we will take up the other two right after.

Mr. Smyth: All night?

Chairman Whalen: All together, because we are afraid that if we adjourn to tomorrow you will get into the trial of one of those long cases and we will miss you.

Mr. Smyth: I will be here, I will assure you of that.

Mr. Whalen: We will finish with this now. Have you any other witness?

OSCAR W. ANTHONY, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. Mayer:

Q. Are you the Vice-Principal of the DeWitt Clinton High School? A. I am known as that.

Q. Were you present at a conversation had between Dr. Tildsley and Mr. Schmalhausen on November 2nd, 1917, at the high school? A. I was.

Q. And there were present there yourself and Dr. Paul and what others besides on that occasion? A. Mr. Schmalhausen and Mr. Margolies.

Q. The conversation was had between Dr. Tildsley and Mr. Schmalhausen? A. And Dr. Paul.

Q. Now, tell what you heard on that occasion? A. As near as I can remember, when Dr. Tildsley came into the office he said that he wanted to see Mr. Schmalhausen. After Mr. Schmal-

hausen came into the room Dr. Tildsley told Mr. Schmalhausen that he had not seen the entire contents of the letter and he would like to have him read the letter in its entirety. Mr. Schmalhausen read the letter and then Mr. Tildsley asked him if he thought those were proper sentiments for boys to express, and he said he thought they were perfectly proper. Dr. Tildsley asked Mr. Schmalhausen if he would allow the boy to read a letter expressing similar sentiments if they were brought in one week later than this had been brought in, and Mr. Schmalhausen said that he would allow the boy to read such a letter, and Dr. Tildsley asked him if he would allow him to read a third of this kind of letter, and Mr. Schmalhausen said he would allow him to read a third letter of this kind. Mr. Tildsley asked him if he thought a boy of this kind, a boy who expressed such sentiments, should receive a diploma from the school, and Mr. Schmalhausen said he thought the boy should receive a diploma from the school, and Dr. Tildsley asked him if he considered a boy who expressed such sentiments a dangerous citizen, and Mr. Schmalhausen said he did not consider a boy who expressed those sentiments a dangerous citizen. He said that he believed in absolute freedom of expression in class, and after Mr. Schmalhausen had answered these questions in the way I have indicated, Dr. Tildsley said, "Well, how would you, what comment would you make on such an essay or composition as this" and Mr. Schmalhausen said "If you will give me time I will make my comments," and Dr. Tildsley and Dr. Paul then left the office, and Mr. Schmalhausen made some written comments, I understand. I have not seen the written comments.

Q. That is all you know about the matter? A. That is all I know about the matter.

Mr. Mayer: Your witness.

Cross examination by Mr. Smyth:

Q. In the first place, Mr. Anthony, you have not been on friendly terms with Mr. Schmalhausen for three years last past, have you? A. I have always been on friendly terms with Mr. Schmalhausen; I have never had anything against Mr. Schmalhausen at all. Mr. Tildsley came to me, if I may be permitted—

Chairman Whalen: You have answered.

Q. Is it not so that you have not been on friendly speaking terms for three years? A. It is not so.

Q. Except where your duties required you to meet him? A. No, that is not so.

Q. You say that you have been on friendly terms for the last three years? A. Perfectly friendly terms with Mr. Schmalhausen.

Q. Intimate terms? A. No, not intimate terms; we have not been thrown together socially.

Q. Have you avoided him socially? A. I have had no occasion to meet him socially.

Q. Have you not avoided him socially? A. I have had no occasion to meet him socially.

Q. You won't answer my question? A. I have not avoided him socially; I have had no opportunity to meet him socially.

Q. When Mr. Schmalhausen was asked whether he would allow a similar letter to be read, is not really what happened this—that Mr. Schmalhausen called attention to the fact that Herman was a very intelligent boy, as shown by his record? A. I do not recall that.

Q. Do you deny that? A. I do not recall it.

Q. Do you deny it? A. I simply do not recall it.

Q. You won't answer that question? A. I simply do not recall it.

Q. You won't answer that question? A. I do not recall it.

Q. Will you answer the one question that I ask you, do you deny that that was said? A. I do not deny it. I do not recall it.

Mr. Smyth: Thank you.

Mr. Mayer: I think it is answered.

Mr. Smyth: He has, finally.

Q. Did not Mr. Schmalhausen say that he would allow another letter of Herman to be read because he would expect that after he had been criticised that the next letter he would write would not be open to the same criticism? A. I cannot answer this question. Mr. Schmalhausen—

Q. Did Mr. Schmalhausen say that? A. I can answer in my own way.

Q. Did he say that first, in substance?

Chairman Whalen: If you cannot answer that question.

The Witness: No.

Q. Did he say that in substance? A. No, I do not think he did.

Q. You say you do not think he did? Did he say something like that? A. He said—

Q. No, did he say something like that first? A. I can tell you what he said.

Q. Not now. Will you answer that question first and stop fencing with me? A. It might have been somewhat similar.

Q. Why didn't you tell us that on direct examination if you are friendly with Mr. Schmalhausen? A. It didn't come to my memory at that time.

Chairman Whalen: It was not asked.

Mr. Smyth: The Chairman states it was not asked.

By Mr. Smyth:

Q. Were you not asked to state that whole conversation?

Mr. Mayer: As he recollected it.

A. As I recollected it.

Q. This important thing you did not recollect that was favorable to him; is that so? A. If you will allow me to answer it completely, I think you will see that it is unfavorable.

Q. Now, have you twisted it so it was unfavorable? A. No, I have not twisted it. I will simply tell you the truth.

Q. Now, did not Schmalhausen say he probably would not write a similar letter again because he was intelligent enough to understand the criticism? A. I have no recollection of any such statement.

Q. Did he not say that in substance? A. Not to the best of my recollection.

Q. Did not you admit a little while ago that there was something like that? A. I did not.

Q. Do you deny that now? Do you deny that you just said it?

The Witness: He said I was lying a moment ago.

Mr. Mayer: I ask that the gentlemen be removed. They are making remarks.

Chairman Whalen: Those gentlemen will please leave that end of the room. Leave the room entirely.

A Reporter: I am a member of the press.

Chairman Whalen: Who was it that said it?

The Witness: This gentleman sitting right there made a comment a moment ago that I was lying.

Chairman Whalen: He will leave the room. Is he a teacher? Who can tell us? Dr. Straubenmuller, is he a teacher?

Dr. Straubenmuller: I do not know, but I will find out.

By Mr. Smyth:

Q. What is the last question (question read)?

A. I said the word—

Q. Did not Mr. Schmalhausen say, with reference to letting the boy read a second or third letter, that it would not be fair to Herman to expect that he would write the same as the first letter until the second or third letter was read? A. I do not recall anything of that sort.

Q. Do you deny that he said that? A. I do not deny it.

Q. Now, with regard to his being a dangerous citizen, did not Mr. Schmalhausen say that he did not think that Herman would be a dangerous citizen, again referring to his record and his ability to learn from criticism? A. I recall now—I do not recall his use of the word “again.”

Q. Did he not base his statement that he did not think he would be a dangerous citizen upon his previous record and upon his ability to learn? A. I recall nothing of the sort.

Q. Did not he say that he was, according to his record, an intelligent person? A. I do not recall that Mr. Schmalhausen said that he was an intelligent person.

Q. Did he not refer to his record showing his intelligence? A. I do not think the record card was brought in at that time.

Q. Did not he refer to it? A. I do not recall it.

Q. Do you deny that he did? A. I do not deny; I do not recall.

Q. Do you deny that in connection with his statement that he would not be a dangerous citizen, in his opinion, that he said that he was an intelligent lad, and that he would listen to reason and would learn? A. I do not recall that any such statement was made.

Q. And you do not deny it, do you? A. I do not deny it.

By Mr. Mayer:

Q. What part of that conversation is it that you omitted to state when I was asking for your recollection of the whole conversation? A. Mr. Schmalhausen made the statement that he thought if a criticism of this kind were read a second or third time, if a composition of this kind were read a second or third time, that the criticism of the boys might show the boy the error of his way.

Mr. Smyth: That is all.

Mr. Mayer: That is all.

Mr. Smyth: Wait a second.

Chairman Whalen: Have you any more questions?

Mr. Smyth: Yes.

Mr. Mayer: That is all.

Mr. Smyth: That is all.

Chairman Whalen: That is all.

Mr. Mayer: I want to ask, Mr. Smyth, if you are willing to admit that Mr. Schmalhausen is the author of these two articles?

Mr. Smyth: I do not know (looking at paper). Yes.

Mr. Mayer: I offer the article.

Mr. Smyth: I object to it as not within the charges.

Mr. Mayer: It is what the charge is.

Mr. McIntyre: The last one.

Mr. Mayer: I offer in evidence an article from the "The American Teacher," contained in "The American Teacher" of May, 1914, entitled "The Ethics of Wrongdoing," by Sam Schmalhausen, De Witt Clinton High School.

The paper was received in evidence and marked Exhibit No. 7 of this date.

Mr. Mayer: I offer in evidence an article which was contained in "The Call" of October 28, 1917, entitled "The Tragedy of Maleducation," by Samuel Schmalhausen.

The paper was received in evidence and marked Exhibit No. 8 of this date.

Mr. Mayer: I do not know whether the Committee would want me to read the whole of these articles.

Chairman Whalen: No, we will read them ourselves.

Mr. Mayer: I offer in evidence another article contained in "The American Teacher" of November, 1915, entitled "The Logic of Free Speech," by Sam Schmalhausen, De Witt Clinton High School, New York, on pages 130, 131 and 132.

The paper was received in evidence and marked Exhibit No. 9 of this date.

Mr. Mayer: That is our case.

Mr. Smyth: We move to dismiss the charges upon the ground that sufficient facts have not been proven to sustain any one of them, *seriatim*, as if that portion were made as to each charge.

Chairman Whalen: Motion denied.

Mr. Smyth: Exception.

SAMUEL D. SCHMALHAUSEN, called as a witness in his own behalf, being duly sworn, testified as follows:

Direct examination by Mr. Smyth:

Q. Addressing myself to the last proof, I want to know who is Joseph Loew, who wrote in the same periodical, "The American Teacher," in April, 1914, on the subject of "Ethics in the Public Schools"? A. At the time he wrote it he was a teacher in the De Witt Clinton High School at the time Dr. Tildsley was the principal.

Q. The article I am about to offer in evi-

dence, was that read before the monthly teachers' meeting at De Witt Clinton High School?

Mr. Mayer: I object to this as immaterial and irrelevant.

Chairman Whalen: That is away back in 1914.

Mr. Smyth: The same matters contained in the article he wrote are contained in this.

Mr. Mayer: You cannot justify a wrong by another wrong.

Mr. McIntyre: We object to it, because if that article is wrong it does not justify it.

Mr. Smyth: If Dr. Tildsley approves of these sentiments.

Chairman Whalen: We are not trying Dr. Tildsley now.

Mr. Smyth: It ought to have some bearing whether or not this particular man should be singled out.

Chairman Whalen: No.

Mr. Smyth: If those in higher authority wrote on the same subject and with similar sentiments.

Chairman Whalen: From what the newspapers tell us, Dr. Tildsley is going on trial very soon.

Mr. Smyth: I did not know that your Honor would be influenced by what the newspapers told you.

Chairman Whalen: No, I am not.

Mr. Smyth: I make my offer.

Chairman Whalen: We will not take that, because that is a lot of irrelevant matter that has nothing to do with the trial in this case; as we look at it, either Professor Schmalhausen has said these things at this particular time or he has not, either one or the other. What he did in 1913 or 1914 has nothing to do with this case.

Mr. Smyth: But what another person higher

in authority, recognized as an authority, wrote on the same subject with the sanction of Dr. Tildsley, it seems to me, has some bearing, if not conclusively.

Chairman Whalen: Dr. Tildsley may have changed his mind since that time.

Mr. Smyth: Why should it not have some weight?

Chairman Whalen: How do we know that that man wrote with the sanction of Dr. Tildsley?

Mr. Smyth: That is what I am going to ask.

Chairman Whalen: We are not trying Dr. Tildsley. The one whom we are trying is Dr. Schmalhausen.

Mr. Smyth: I will offer this in evidence. First I will ask this question.

By Mr. Smyth:

Q. I will first ask was this article entitled "Ethics in the Public Schools," written by Joseph Loew, read before the monthly teachers' meeting of the De Witt Clinton High School in March, 1914?

Mr. Mayer: We object to that as immaterial and irrelevant.

Chairman Whalen: Objection sustained.

Mr. Smyth: Exception.

By Mr. Smyth:

Q. Is this paper that I hold in my hand a periodical that was published in April, 1914, known as "The American Teacher"? A. Yes.

Q. And is that the same periodical that contains the article which was offered in evidence, written by you? A. It is.

Q. Was this article written in the presence of Dr. Tildsley?

Mr. Mayer: We object to that.

Chairman Whalen: Excluded.

Mr. Smyth: Exception.

Q. Did Dr. Tildsley make any comments on the subject at the time?

Mr. Mayer: We object.

Chairman Whalen: Same ruling.

Mr. Smyth: Exception. I offer the article in evidence.

Mr. McIntyre: We object on the ground it is incompetent and irrelevant.

Chairman Whalen: Excluded.

Mr. Smyth: Exception. I will have it marked for identification.

(The paper was marked C. for Identification.)

By Mr. Smyth:

Q. Is the issue of "The American Teacher," issued in June, 1915, which I hold in my hand, one of the publications referred to? A. Yes.

Q. Did that come out after the published article of yours which went into evidence? A. Yes.

Mr. Mayer: I object to that as incompetent and irrelevant.

Chairman Whalen: He answered. Please wait.

Mr. Mayer: I move to strike the answer out.

Chairman Whalen: It is in the record now.

Mr. Mayer: All right. Let it stand.

By Mr. Smyth:

Q. Did you see a letter written by Dr. Tildsley to the editors of "The American Teacher" contained in this periodical? A. I did.

Mr. Mayer: I object to that.

Mr. Smyth: Do not answer when there is an objection. I offer that letter in evidence.

Mr. Mayer: I object to that as immaterial and irrelevant.

Chairman Whalen: Excluded.

Mr. Smyth: Exception. Mark it for identification.

(The article was marked D for Identification.)

By Mr. Smyth:

Q. How long have you been a teacher? A. Since September, 1910, at De Witt Clinton High School.

Q. How old are you? A. Twenty-nine.

Q. Where were you born? A. New York City.

Q. You were educated in the public schools, were you? A. I was.

Q. And you were teaching in the De Witt Clinton High School how long prior to the time of this Herman letter episode? A. Seven years technically; I have had a leave of absence for a year, in which I went to Columbia, but in time values I have taught six years, but in technical values, seven.

Q. For the sake of brevity will you please state what the records show with regard to your standing? A. The records there by Dr. Lyon, District Superintendent, Dr. Tildsley, who was my principal for three years or more, possibly four, and by Dr. Paul. I think I am not exaggerating when I say you will find the underlying parts that are relevant, that is uniformly what people would call high praise of character, successful teaching efficiency, affection for the boys, ability to co-operate with the pupils, all the things that are required in relation to personal and general social and moral efficiency.

Q. Do you remember the assignment which called forth the letters among which was the Herman letter? A. Yes, I remember it very accurately.

Q. Do you remember the wording of that assignment? A. I think I do.

Q. What was it?

Mr. Mayer: I object to that. The assignment is in evidence.

Mr. Smyth: It was received subject to identification.

Mr. Mayer: No, it is marked in evidence.

Mr. Smyth: At the time I stated it should appear that it was not exact it could be corrected, and the statement was made by my opponent that that was written by a boy.

Mr. Mayer: Since then it has been identified by Dr. Paul as certified to by Mr. Schmalhausen and put in evidence and it is Exhibit 5.

By Mr. Smyth:

Q. Is that the wording of the assignment as given by you to the class?

Mr. Mayer: I object.

A. As originally—

Mr. Smyth: Wait a minute. There is objection.

Mr. Mayer: I object on the ground that the paper itself is the best evidence.

Chairman Whalen: You read it to him; I understood you had read that, and both agreed that was the paper.

Mr. Smyth: No, the word "very" was not in it, according to their own witness.

By Mr. Smyth:

Q. I will read it to you: "An open letter to the President: Write a very frank letter to Woodrow Wilson commenting within the limits of your knowledge upon his conduct of the war against the German Government." Now, is that the assignment as given by you to the students?

A. Not word for word. There is a slight modification, which may be important.

Q. Do you recollect what the wording was? A. I do. The simple change is this: "Write an

open letter to Woodrow Wilson commenting frankly." This reads a little different.

Q. "Comment frankly." A. The rest of it is all right.

Q. "Within the limits of your knowledge, on his conduct of the war against the German Government"? A. Yes, "Within the limits of your knowledge upon his conduct of the war against the German Government."

Chairman Whalen: Mr. Smyth, a member would like to ask a question.

By Miss Leventritt:

Q. I would like to ask if the boys in Mr. Schmalhausen's class write down the assignments given to them by him, given to the boys by him, or does Mr. Schmalhausen put it on the blackboard? A. It is dictated at the very beginning of the period and the boys have books out, and I take it, write it down. I believe that some of them even try to memorize it, but generally I think they are honest and do write it down.

Q. But you do not write it down? A. No.

By Mr. Smyth:

Q. You knew nothing about the Herman letter until when? A. Exactly two weeks after it had been assigned. It was assigned October 19th, Friday, and two weeks later in the principal's office Dr. Tildsley gave me the whole letter.

Q. Prior to that had you had a conversation with Dr. Paul? A. I had, October 26th, Friday afternoon, 3:30.

Q. That was the first conversation you had with him; what was it? A. The first conversation, I could not meet him during the week, when he had asked me to, because he and Dr. Tildsley were busy in the office attending to some boys

who had been causing strikes, and he could not meet me in his office, as I have explained.

Q. Will you state your recollection of the whole conversation with Dr. Paul? A. I came in the office. He was there alone, standing. I was sitting. He said, "Do you think that that is a proper assignment to give in war time"? I said, "If by the word 'proper' you mean intelligent, I firmly do." He said, "Now, don't you think it might arouse in some boy's mind a desire to speak disloyal utterances?" I said, "If you will be more specific in your interpretation of 'disloyal' I will answer." He refused to answer accurately what he meant.

Q. To answer what? A. To answer my question. And then he went on and repeated that "Some boys, wild-minded boys, possibly a few, might write essays with very unpatriotic utterances," and I said again, "Will you specify so I can talk intelligently about it."

Chairman Whalen: We cannot hear you.

A. (continuing): I beg pardon. Finally, after numerous questions pro and con, he kept repeating, "Now, if I were you I would be careful in these matters, I would not introduce my personal views." I said, "Do you accuse me of introducing personal views"? And he said, "No, do not put words in my mouth. I never said them." I said, "What is the meaning of this?" He said, "All I said was that I would not introduce any such propaganda." And I said, "I have never tried to introduce any propaganda." Then he asked me to retract the statement on the ground that I had put the words in his mouth. We dropped that in a moment, then I said, "Now, let us be reasonable about the matter: As to this assignment, it may be injudicious, I think I am open to conviction on the point, I mean in the intellectual sense, and what would

you have me do? You have never invited me before to submit subjects and I have given hundreds of them to the boys in the course of my teaching of classes in the school," and I said, "Would you want me to bring the subjects down to you so you might look them over, and if you thought that it was unwise because of the war, I am sure I would be open to reason." I said, "You have a head of department for that purpose." I said then, "Is it understood that hereafter that when I give a subject which is of somewhat doubtful value from your point of view, if I can see that doubtful value, I am to go to the head of the department and ask her?" He said, "Yes, you can do that." I said, "All right, I will." That is the substance, I think.

Q. Is that all of the conversation that took place at that time? A. Yes, so far as I was concerned. It was my impression that was October 26th, in the afternoon, and the subject had been dropped, because we had agreed that hereafter I was to show the specific assignments to the head of the department, and that she was to give her O. K. or vice versa, and I would stand by the decision.

Q. Was the subject of the Herman letter spoken of at all? A. Not a word.

Q. You have given now all of the conversation that Dr. Paul had, all of the conversation with Dr. Paul at that first interview? A. A faithful summary of it.

Q. Do you remember the next interview that you had with regard to this assignment? A. Yes, I was called from my class on October 31st to meet with Dr. Tildsley, and I do not know who else. I did not know at that moment. I was called at 2:30 and waited outside until 3:30 near that little office, at which moment Mr. Schmeer emerged; that was the end of the day. I said to

Dr. Tildsley, "I do not object to it at all on the ground of union hours or anything like, but the truth is I have two engagements, one with the Committee that was going to discuss the long day, and I said, "If you do not object, tomorrow morning will do, and I will come to your office." He said it is all right. Therefore I was called the next morning, about 9:30, out of my class, and I was asked by Miss Garrigues to come down to the little office and meet the two gentlemen, Dr. Tildsley and Dr. Paul. What else do you want me to say?

Q. Do you recall the conversation that then took place and all that happened at that time?

A. I believe I can tell it safely.

Q. Then state it? A. The very first of it was this: "Did you approve of the Whalen resolutions"? A. "I did."

Q. Who asked it? A. Dr. Tildsley asked (I will assume throughout that Dr. Tildsley was asking, therefore, if not I will insert Dr. Paul): "Do you think that the Teachers' Council has a right to rush into print?" That was the substance of that question. "I do not like the use of the phrase 'Rush into print,' and if you mean did they have the right to use publicity with relation to their grievances I think they had, the Teachers' Council had the right to call that meeting at which 105 of the De Witt Clinton High School teachers were present and at which that resolution was drawn up and approved by 103."

Q. Why do you call it the Whalen resolution?

A. I think that is the technically correct name.

Q. How did it get that name? A. I suppose through repetition, using that name, derived from the fact that Mr. Whalen was at the meeting before which grievances were presented by representatives of students and representative teach-

ers and principals and had made assertions which some of us disapproved of, calling them in the resolutions undemocratic, arrogant and anti-social.

Q. Are these the resolutions? A. Yes, those are the resolutions.

Mr. Smyth: I offer them in evidence.

(The paper was received in evidence and marked Exhibit E of this date.)

Q. Now, go on and state the conversation as near as you can. A. Dr. Tildsley said, "What is it that you object to in Mr. Whalen's attitude?"

A. And I said, "I do not like to see an official of the Board of Education with an intent of intimidative authority to young people as if bullying them, that he would close down the schools if they did not go back to their schools." I said, "Some of us as teachers, grown up teachers, have some intelligence." He answered by the assertion, repeated two or three times, with a finger pointing to the teachers in the office, "That neither the teachers nor the pupils were going to run the schools." He said, "Is it not true that the pupils and teachers do not run the schools." I said, "That depends upon the use of the word 'run.' If you use the word 'run' in the narrow, technical sense, I grant it. If you use it in a fair educational sense, I do not grant it, but in a broad educational sense the teachers and pupils do run the schools," and we went on with that.

Q. Come down to the Herman letter? A. We took up a half hour with that. Then Dr. Tildsley read me a letter. I did not know whose letter it was, because it was in his possession, his hand. He was reading it. He read the first page, and began a series of questions, first of importance, "Don't you think that it is unwise or helps to inculcate disrespect in young persons if you allow them to address the President thus inform-

ally"? I said I thought not, that if he knew the boys themselves, the boys who were going to write that composition, he would agree they were dignified young men with respect for the President of the United States, that "Woodrow Wilson," as the phrase was used hundreds of times a month, and I am certain the people using it had no intention of being disrespectful.

Then he went on with the assignment and asked me two or three questions and asked if I thought it was wise. I said, "If wise means useful and stimulating, yes." He asked two or three more questions on the subject of instinctive respect, and asked me, "did not I think it was my duty as a teacher to fill the boys with as great an amount of instinctive respect for superior officers, as such, that they would automatically respond to superior office and respect it." I said that I thought that was a very dangerous tendency, because we know from our study and observation of young people that they have a great amount of natural native respect for superior position, and that our function was to build that respect upon principle, from reflection from the knowledge of the conduct of the man they were respecting, otherwise we would have no underlying means of differentiating between persons doing wrong in office and those doing what was right. All I insisted upon was that we teach respect for position; that if the word "instinctive" implied blind obedience, blind respect, blind reverence, I certainly would object. That was a fair summary of that.

Q. Did you at that interview say in words or in substance that you agreed in the principle of the letter or saw no harm in it? A. There is not a remark which I made that could possibly be construed that way.

Q. Was such a question as that asked of you,

and if so what was your reply? A. On the first day there was no such question asked; the nearest question was this: "Don't you think that if a boy writes like this (that was the first page; I did not know which boy it was), he is a dangerous citizen?" and I said, "You know young boys are capable of growth and I would not be willing to come to any such conclusion from just that, I would want to know more about the antecedents of the boy, about his environment, his mental attitude and previous record," and I pointed out that the specific offence is not any test, the full test of personality, because we know we all want to be accredited with the average as we grow; that is what I believed in the case of the boy unknown that first day.

Q. At that time you did not know who the boy was? A. I could not. He read me the first page. He did not tell me who it was.

Q. He read you the first page? A. That is what he told me the next day.

Q. Is that all that occurred on the first day that you can recollect? A. No, there was a strategic moment. I was about to go, and just as I got up Dr. Tildsley said, or Dr. Paul said, "Wait a minute." Dr. Tildsley had asked me several questions about my connection with the Whalen resolutions, and Dr. Paul asked me: "I want to ask you a question." Dr. Tildsley said, "Go ahead," I said, "Yes." He said, "Were you the author of the Whalen resolutions?" I smiled a minute. That was Thursday morning. The previous day four other members of Teachers' Council had been quizzed. We had made up our minds that the whole thing was a star chamber proceeding.

Q. Wait a second. What did you reply when you were asked, "Did you write the resolutions?" A. I said to Dr. Paul if he would recall the meet-

ing for the 103 teachers who approved and endorsed the resolutions he would find out there who were concerned in the authorship of the resolutions; that was the specific statement I made to him.

Q. Was that all that occurred at that meeting on the subject of the Herman letter? A. We discussed instinctive obedience and instinctive respect all the time.

Q. Did you express any sentiments opposed to instinctive respect of the rules of this country? A. As far as—

Q. Answer that yes or no? A. I did not express any sentiments opposed to the inculcating of respect for the President of the United States. It was not rulers, he mentioned President of the United States.

Q. I mean by that those who govern. On the contrary, what did you say in that regard? A. My own record of seven years of active classroom work.

Q. What did you say? A. This was the substance.

Q. All right. A. That there was no suspicion at all of my having ever failed to inculcate respect; we had simply gotten into a metaphysical discussion on the use of the word instinctive. I said to Dr. Tildsley, "I do not like that word 'instinctive' because it carries the blind idea, the dog-like idea; I will substitute as the equivalent of it my interpretation of its interpretation, the word reflective. That is where the boy was to give his respect naturally, as he does to any person who occupies an important position and performs deeds of social beneficence."

Q. Coming to the next day, Mr. Schmalhausen—have you given all the conversation now that you can recall? A. Of the first?

Q. Yes. A. Would it be relevant here, Mr.

Smyth, if I read this paragraph from "Oral Education Syllabus on"—

Mr. Mayer: I object to it.

Q. Did you refer to this article in your talk?

A. No.

Mr. Smyth: Then it would hardly be relevant.

By Mr. Smyth:

Q. Coming to the next day, will you please state what occurred on that occasion? A. Yes, I will just look up a point, that was November 2nd, a Friday.

Q. That was the day when they showed you the whole letter? A. Friday. That was the second meeting. At the very beginning Dr. Tildsley wanted to make sure that he had got me right on the problem of the principalship. He quizzed me the day before a few minutes on the functions of the principal. He wanted to re-affirm the truth or untruth of what I said. I think we came to some understanding.

May I say this: I want to bring in here a part of the first conversation which is linked with the second, which I have not given. It is in relation to the principalship.

Q. State it. A, I had been asked whether I thought that a principal was indispensable and I said, word for word, and repeated the next day when they had given me a little renewed quiz, that under the present system that I could see no indispensable educational function, I emphasized that, which the principal performs. I went on to outline the fact that he was absorbed all the time in administrative and technical duties which I did not in the terms of my definition call functional, and we went over the problem of supervision of the principal, how much it meant. I pointed out that it was simply impossible to expect any principal to be very ef-

ficient because of the numerous subjects, the fact that he lacked the time—

Q. I know we are going into something outside of the charges? A. I bring that in to show that on the second day we began with that subject and he said "Have I got you right, that under the present system the principals perform no indispensable function?", and I said "No", we must put in the word "educational". From that we went on to the letter. He said "Yesterday I did not read more than the first page. I was a little bit taken back, so I wondered what it meant and I asked whether Dr. Paul had given only the first page to be read to me, or whether he had been given all the letter," and he said he had been given the whole letter, and he at first had not read it all, and he had just read it, and he said "I know it is a serious problem to dismiss this boy Herman, I do not think that is the wise way of treating him, let us look at him educationally, what shall we do about that type of a boy, he is a dangerous citizen."

Mr. Mayer: Who said this?

The Witness: Dr. Tildsley to me. I said, "Suppose you do this: We want to be fair to the boy, we both agree he has committed an offence. Suppose we get all his records in every study for the past six or five terms, suppose we send down, which we have done time and again in relation to these boys which have been unsatisfactory, and I suppose these will give us the knowledge of past, so possibly we can judge him perhaps with a little more understanding because this act looks like a terrible act, and with relation to his previous career it may be only secondary, and we will have hopes he will grow up and improve." And finally we came to this problem. Dr. Tildsley said, "Now, suppose

this boy read the same thing again in class or wrote the same, would you allow him to read it?" I said that assumption is simply contrary to the basic order of common sense. This boy is a reasonable boy, he is intelligent. He is capable of growth. That is what I am assuming as his teacher. I assume that criticism will teach him. And he kept repeating about three times hypothetically "But suppose he wrote the the same thing would you allow him to read it?" I said "Dr. Tildsley, I could not possibly know beforehand the contents of the letter. I should certainly not wish to be a policeman and oppose myself personally physically to the boy. I would have to allow him the privilege to come before the class and begin to read it, and the problem was when to stop him, and since in this first letter, the most dangerous utterance came at the very end it was the problem of where to stop that boy". "There we would have a little difficulty", but I kept insisting that the boy would not repeat the offence; he was capable of growth and it was my duty in behalf of the theory of fair play to boys to allow him to begin to read." "If, however," I said "the second letter proved as offensive as the first that boy should be considered incapable of going on with his education", for I said "For my part I did not wish to make any such assumption." Then he says "Suppose he did it a third time". I said "That is contrary to reason. The boy is then put down as obstinate, stubborn, intractable, and therefore utterly unfit for education." That was the substance of my answers to Dr. Tildsley on the problem of the repetition.

Q. Had you at that time expressed yourself as being in accord with the letter or the sentiments of the letter? A. I never mentioned a

word or whispered a thing that could be considered as implying what the gentlemen are now assuming that I was in accord with anything in the letter. The fact that they asked me to criticise and gave me ten or twelve minutes to do so, I think would indicate the fact that I had not yet expressed any such sentiments. If it had been put to me at once, and if they gave me the letter to criticise—

Mr. Mayer: I object to the argument.

By Mr. Smyth:

Q. Then you were given the letter to criticise. How was that done? What was said to you? A. Dr. Tildsley said "Suppose you correct it now". I said "All right". I did not happen to have a pencil. I walked over to a stenographer and got it. He gave me a pencil. I said "In about ten or twelve minutes." He said "That is all right". At that moment he walked over to the corner of the office and talked with Mr. Anthony. In twelve or fifteen minutes he came back. He read them over. He did not understand my handwriting. I told him. He made absolutely no comment on my criticism.

Q. Is that all that occurred on that occasion?

A. Then he began once more to question. "Now, suppose this boy had written the same sentiments would you allow him to read it?" I said it would be my duty as a fair-minded teacher, since I could not know the contents beforehand, to allow him to read, and inasmuch as the boys were vigorous-minded and a vast majority, as everybody admits, patriotic, we could rely on the pupils to begin vigorous criticism of any statement he would dare to make in the second letter which would be offensive.

Q. Have you now stated all that you recollect

of the conversation that took place on that day?

A. There is one more point.

Q. With reference to the Herman letter? A. Yes. I said to Dr. Tildsley, "Now, Doctor, would you allow Miss Garrigues to be here, I think she will be helpful, not because she is prejudiced in my favor or against me, but she will be helpful," it so happened that the first set of papers were taken down on one day and the second set of papers or the remainder, the second day, and of course, I was anxious to have her give all the papers in, which she of course did, and I was anxious to know if Dr. Tildsley had been given all of the papers, and I said "Have you the whole set of papers?" and he said "Yes." I said "Do you object to bringing Miss Garrigues into this?" and he said "No" he said it was all right, he would see her later. I tried to give the impression that the criticisms naturally were of a paper I had not seen, a paper which was shown to me only two weeks later, a paper which had not been read in my class, and on that paper you have a written criticism, everybody knows the function of a teacher is double, the written and the oral, and certainly in a class a teacher would have added oral criticism in the presence of the whole class to his written criticism.

Q. Had it been your custom when essays were written in response to an assignment of that kind to make more or less technically what are called mechanical annotations on the paper itself and to supplement that by oral statements explanatory? A. We have followed in our English department for years the double method of calling attention to the English as being one of our functions, and calling attention to the process of logic, the nature of the statements, implications of the statement, logical functions, and if you like technical functions.

Q. Is there sufficient room in the margin of such a paper as that to make sufficient criticisms of the substantive part of an essay? A. Only through hints and phraseology carrying their own significance.

Q. The marginal notes are merely for the purpose of calling attention to the faulty English; is not that so? A. Partly so.

Q. And partly? A. Partly to the process of thinking, etc., self-expression.

Q. Now, will you please state to the Committee what are your own ideas with reference to the Herman letter?

Mr. Smyth: Is it all right?

Mr. Mayer: Go ahead. That is just what we want to hear.

A. If the Committee had time, and it has not, and I shall not impose upon it, I could read or they could see for themselves a list of all the assignments given this term from the very beginning of my case.

Mr. Mayer: That has been stricken out.

Q. Let us get to the point. What are your own ideas with reference to the spirit and substance of the Herman letter? A. Yes, sir. Herman comes from an environment where I think we may call the people—

Q. You are digressing. First, categorically, do you agree with it or disagree? A. Oh, absolutely disagree from head to foot,

Q. What are your ideas with reference to the subject matter of the letter? A. The subject matter is offensive from every point of view. Part of it is irrational. Part of it is crude and violent, the whole thing is a wrong frame of mind, and in my discussion with Dr. Tildsley, with which I took up a lot of time, I tried to explain clearly what influences in that boy's social and economical and home environment

were responsible for some of his sentiments. So far as I was concerned there was no implication at all at any time that I ever accepted the thought of that letter.

Q. On the contrary how did you express yourself to Dr. Tildsley and Dr. Paul and Mr. Anthony? A. I pointed out that if that boy had written a similar offensive letter for his second and, as he put it, a third time, I would look upon him as simply hopeless mentally. I think that is a sufficiently severe criticism of a boy sixteen or seventeen.

Q. With reference to the charge that is made here with reference to what you have written, I have never had a chance to read these things which you put in evidence, "The Ethics of Wrong-doing," by you, published in May, 1914, in "The American Teacher" and the article entitled "Confessional, the Tragedy of Mal-education" by you. Is there any statement you desire to make to the committee about those? A. That if only a paragraph is quoted it would be unfair, because we know it is easy to wring from any man's work an excerpt and give it a false psychological background. I think it is fair for me and for the committee to take a few minutes and read the whole article so as to get the background of that article on "The Tragedy of Mal-education." I would like to say that it is a summary of ideas contained in several books. One is Boris Sidi's "Philistine and Genius," the "Tragedy of Education" by Edmond Holmes, a book by Alfred Russell Wallace, "Social Progress and the Moral Environments" and the Hanus Reports published several years ago, "Investigations of the School Systems." Those are mentally the background.

Just one thing more I should like to add, the "Essay on Education," by Bertram Russell found

in his volume "The Principles of Social Reconstruction." Those are the educational and psychological antecedents for that article called "The Tragedy of Mal-education."

Q. In justice to yourself and in view of the general statements that have appeared in the public print from time to time about teachers, without mentioning their names, will you please state what are your views with reference to whether or not you are in accord with the policies of the administration in this matter of war with Germany? A. I am sure I accept the great document that President Wilson has written representing the highest ideal of which Americans are capable. His interpretation, his attitude, his points of view in relation to the war for democracy meet with my complete intellectual approval. I think there has nothing ever happened in my classroom, in my present life that will deny the truth of my general intellectual standing. If you want me to say a word or two more specifically I would be glad to do so.

Q. I want to go on record one way or the other on the subject of your Americanism? A. It is true, for example, that when there was a discussion of the Conscription Act I wrote in behalf of the volunteer system as being more in accord with the traditions of freedom in America, but since conscription came into being as an act I have come under it, as have other young men between the proper ages. That in itself I should think is sufficient evidence, technically and morally, that I have complied with the request of the government, in spite of the fact that I tried in my little way to be instrumental in preventing conscription as the first policy believing that the volunteer system might be better adapted to meeting with the sympathies and views of the people, and if it be necessary conscription later.

When it came into being I came under its operation as I have testified already, as have others between the proper ages.

Q. You are in sympathy with the policy of the American Government? A. I am.

Q. In waging this war? A. I am.

Mr. Smyth: He is your witness.

Cross examination by Mr. Mayer:

Q. Mr. Schmalhausen, did you say in commenting on the fact that essays or letters such as Herman wrote might be read in class from time to time, thus inferring that the De Witt Clinton High School, "Is no doll's house"? A. I never made that assertion.

Q. Mr. Schmalhausen, you know that you are a teacher employed by the Board of Education of the City of New York? A. I do.

Q. You know that the Board of Education of the City of New York is a part of the State Government charged with the education of youth in the City of New York, do you not? A. I do.

Q. Do you not know that as an officer of the Board of Education, which is a part of the State Government, you are personally charged with certain duties with reference to the State Government? A. I understand that.

Q. And that those duties have to do with the development, educationally, of the juvenile mind; is not that right? A. That is right.

Q. Do you not believe that as part of that public duty of yours it is necessary for you as part of your policy in your classrooms to teach instinctive respect for constituted authority? A. The word instinctive carries the intelligent and fair content of my word "respective"; I absolutely do.

Q. I mean by instinctive respect an inborn, native natural respect for constituted authority?

A. If you do not mind my saying so, if it is in-born what am I to teach.

Q. Strike the word "in-born" out. A. Then it is native, you say?

Q. Yes. A. You will have to explain what you mean by native.

Q. I mean such respect as any American boy will give to constituted authority under our form of government? A. Yes.

Q. You do believe that? A. I do.

Q. Regardless of whom the individuals may be who occupy the offices? A. What is the meaning of regardless? When you have—let me argue a little bit?

Q. I am speaking now of the high governmental officials. Do you believe that? A. I believe it is my duty to teach respect for constituted authority. I stated that before. I repeat it.

Q. Instinctive respect? A. If it has the content which you put later into the word "native"—yes.

Q. What do you mean by reflective respect in contradistinction to instinctive respect? A. I assume instinctive to mean doglike fealty, a blind, mechanical attitude which people are capable of, young people are capable of. By reflective I simply had in mind the constant corollary between the dignity of the high office and the dignity of the man who occupies the office.

Q. Do you believe that you should teach instinctive respect for the office of the President of the United States as such in time of war?

A. If you ask—

Q. I ask you to explain the phrase "In time of war"? A. That is a metaphysical phrase.

Q. The highest office in the land, I mean? A. If "as such" means that—certainly.

Q. You do? A. Certainly.

Q. No, no, answer my question? A. I can-

not until I ask you to explain the phrase "As such."

Q. In time of war? A. That is a metaphysical phrase.

Q. Do you mean you should teach and inculcate instinctive respect for the occupant of the office of President of the United States in time of war? A. Or in time of peace for that matter, taking the word instinctive in the sense in which you later used the word "native," I do.

Q. Do you believe that it is a crime now that Congress has declared war against the Imperial German Government to use any means whatsoever to oppose our government in the conduct of the war? A. I do, within the definition stated by law and the Congress; I am not a lawyer, I am assuming you are using the word "crime" correctly, and I answer that yes.

Q. Does not that mean that the President is entitled at this time in matters pertaining to the conduct of this war to that dog-like respect of which you just spoke? A. The word "dog-like" as used by yourself?

Q. No, I did not use it. A. I know, but I used it, I thought correctly.

By Mr. McIntyre:

Q. What do you mean by dog-like respect?

A. Imposed by external authority, as though I was holding a club. I put this question to Dr. Tildsley: I said, for example, assume that there is a cordial relation between me and my pupils, we have our common friends, they care about me, have the affection for me, maybe, that I have for them, but it is not due to the fact that on the first day I came to my classes I said "Attention: from now on every boy in my class must have an instinctive respect for me." No, through cordial relations of every day classroom

contact, with kindly persuasion through deeds performed, through courtesy and kindness they have for me what I would call, if you like, instinctive respect. I did not impose it by having a club over their head.

Q. Do you believe in absolute freedom of expression by students in the class room in regard to such a theme as this contained in Exhibit 5?

A. If by the word absolute you mean utterly uncensored, uncriticized, certainly, it is not contrary to reason.

Q. What freedom of expression do you believe in? A. I believe in the freedom of expression that arises from a boy's recognition of the fact that one of his greatest rights in a democracy is to express his mind as intelligently and with as much dignity as he can on the subjects within his proper knowledge, at the time; that is freedom of expression, and others shall listen and if they disagree they are to wait and not to interrupt or interpose in the midst of what he says.

It does not mean that you are to take subjects twenty-five years mentally beyond the boys, and say: "Here you are, discuss that boys; talk that over." It is an unfair interpretation.

Q. Do you believe that it is the business of courageous radicals to enthrone unfettered freedom of utterance, as the one imperishable safeguard of every one's unique contribution to mortality's melting pot? A. Mortality's melting pot?

Q. Yes, mortality's melting pot? A. They must have gotten it wrong. That is all right. I understand the substance.

Q. You understand the substance? A. Yes, sir.

Q. Look at this article and see if you did not write it? A. Yes, I wrote it; I wrote this "The Logic of Freer Speech."

Mr. Smyth: When was that?

The Witness: November, 1915.

Q. Do you believe in that? A. This was written for adults, for anything between 21 and 75. That was a vigorous expression in a point of view in opposition to the other point of view. I quite easily see how anybody who has a mind to can twist the word "unfettered" to be a kind of anarchistic license, but as to ever having meant any such a thing, perhaps my years of conduct may be a dismissal; that I did not mean.

Q. You never did mean what you said here? A. I never meant by the word "unfettered" what some people may think I do mean or other people think by "unfettered." May I add this remark: This article came out shortly after Prof. Overstreet had talked on the same subject at a large teachers' meeting, and there we did try to work out a theory of freedom of speech under his guidance; what are the limitations? And here I may try to make some analysis.

Q. If a pupil should not agree with the actions of the President of the United States, must he still manifest respect for the President of the United States in war time? A. Not only must he, but he will, I am sure, for many reasons.

Q. You write in this article called "The Tragedy of Mal-education," as follows, and I ask you if you still agree with it: "I am sick at heart. My mind is perturbed. When I think of these things I grow so despondent I am in a mood for revolutions. I realize my insignificance. I realize the tragedy of my tactful cowardice, the guilt of my tactful evasions. I realize to be a teacher is to be a craven, a blind fool and an apologist—anything, great God, but a truth teller." I am glad I mentioned before the relation of the paragraph to the whole article. You have not the time to read

it and you will do me the courtesy as soon as you can to read the whole article and get the background. Before that paragraph read "In my Moods of Disillusion." Anybody who has any tendency to be reasonable, or does not want to frame a person here will be glad to read the article and agree that it is the poetic or prose-poetic expression of a mood.

Q. Independent of this article do you believe that "to be a teacher is to be a craven, a blind fool, an apologist, anything, great God, but a truth teller," independently of this article?

Mr. Smyth: You cannot take it independently.

Mr. Mayer: I am trying to get his side of the question.

A. By all means, get my side of the question. If you are asked to judge a man whom you do not know, you would try to find out not only his own acts, his own conduct, but other people's opinions; if you had a teacher who had been teaching for eight or ten years, and in the judgment of teachers duly experienced and perhaps, as I am citing an instance of a teacher, I will have to speak personally, he was looked upon as a person of high development, and high ideals, by no stretch of the imagination could one suddenly descend to the conclusion that because he had written a certain paragraph carrying a metaphorical interpretation, it was to be carried against him as a literal interpretation.

When I say a "blind fool," I know greater men than I have referred to mankind as fools. It is not to be taken in a literal sense. I think that statement is a fair statement if fairly interpreted as it should be, as a quotation from a poem, though I do not claim that this is a poem at all.

Q. Do you remember when you were asked

about this article of this boy you made use of the expression to this effect, that when the motive is not vicious then the act is not serious, or words to that effect, the Herman boy? A. When I was asked about the Herman letter?

Q. Yes. A. What was specifically asked now?

Q. Do you remember having made a remark like that on that occasion of your discussion with Dr. Tildsley of the Herman letter? A. As far as I know we did not discuss the motives.

Q. Do you believe that where the motive is not vicious the act is not serious? A. The word "serious" has a special significance there; I believe where the motive is pure the act is not serious in a criminal sense. For example, if a child were to shoot a person, while we know the consequences are desperate enough, we cannot praise that child for that, for having done it. Everybody will assume that the child has to be forgiven, because the motive is pure enough; where you hurt a friend the motive is pure, and the chances are you will be forgiven.

Q. Hence, you believe that if the boy Herman, in writing this letter to President Woodrow Wilson did not have any vicious motive in writing that letter, his act was not serious? A. His act was very serious. You should say—

Q. That is—

Mr. Smyth: Do not interrupt him.

A. (continuing): You should say, assuming the boy's motives were honorable, and the results of the motive were bad, as in the case of the letter, would the act be considered serious? The answer is certainly.

Q. Then you believe under such circumstances in the indispensable value of the most extreme unfettered discussion of matters of that kind?

A. I do not understand the co-relation and relevancy of that at all.

Q. If you do not understand it, you need not answer it. Teachers, you say, in a broad sense, run the school? A. Yes.

Q. What do you mean by that? A. That is clear to some of us, as I said in part to Dr. Tildsley, doing as well as we can, taking an interest in their lives, the vital fact in the school system which no one can deny, is the having of as close relation between the pupil and the teacher as we can develop, and the teacher wants some credit for that.

Q. You think then, that you have a very strong and penetrating influence over the juvenile mind as teachers? A. We surely do.

Q. Do you believe that as a part of the exercise of that influence over the juvenile mind it is your duty as a teacher in a Board which is a part of the Government of the State, to inculcate patriotism in the minds of your pupils? A. Surely.

Q. You do? A. I certainly do.

Q. Unquestionably so? A. Unquestionably so. The majority of letters go to prove that if you want evidence; there was only one letter picked out of seventy-six; why were not the other seventy-five taken?

By Mr. McIntyre:

Q. Why did you give this assignment at this particular time, this assignment to write a very frank letter to Woodrow Wilson? A. That is interesting.

Q. Why did you give that assignment at this particular time and not at any other time? A. I would like to make one comment, and I am going to answer, if you do not object. The logic of the question is a little unsatisfactory when he

says: "Why did you give that at this particular time and not at any other time?" What is the meaning of that? Suppose I had given it at any time, and the next time you would still say why did I not give it at any other time. There must be some time. I would like to say that I still have the list of assignments from the very beginning covering all kinds of interesting subjects, "The Play of Macbeth," "Henry," and various subjects, and we have not had, and that is the truth which was borne out by the facts in this case, any general social discussion in the class. Of course I can see now how people who wish to can see a sinister intention.

Q. Why did you call for frank criticism of President Wilson's conduct of the war?

Chairman Whalen: He did not say criticism, he said comment.

Q. Why did you call for frank comment? A. By showing you assignments given in the past six years, you will find that one of the words used over and over again in all my assignments is the word "frank" and the word "frankly." It is built upon educational theory, and in numerous assignments of all kinds, letters and compositions, and talks and exchange of topics we have always used the word "frank."

Q. Why did you not ask the pupils to make a frank comment; why did you say "Woodrow Wilson"? That is the idea I want. Why didn't you say President Wilson, or the President of the United States; why did you say "Woodrow Wilson," why did you call him by his first name?

A. A sense of affection, perhaps; a sense of human fellowship.

Mr. Smyth: We all say Teddy Roosevelt.

Q. Do you think it is more respectful and deferential to speak of him as Woodrow Wilson

than as President Wilson? A. I honestly believe that there is much more sincerity in that friendly attitude than in the other attitude.

Q. When you and Dr. Tildsley got into a discussion as to the contents of this letter, did you feel that you were likely to get into trouble over that letter at that time? A. When he gave me—

Q. When he gave you that? A. That complete letter?

Q. Wait a minute; when he gave you that letter to criticise, did you feel that the culmination might be trouble for yourself? A. I did not think so in relation to that letter, because I had had a previous interview with the principal and our head of the department, and I did not think so.

Q. You did not think it was time to have your attitude with reference to the letter thoroughly understood by Dr. Tildsley? A. Yes, as a matter of educational policy, but I—

Q. Didn't you think Dr. Tildsley did want that letter to be criticised by you as in the class? A. It was not.

Q. Didn't he give you the letter to criticise as you would criticise it? A. I thought you said did I criticise it in the class.

Q. Did he not give you that letter to criticise as you would criticise it in the class? A. The written assignment.

Q. Didn't you know it was time to let Dr. Tildsley understand your whole attitude with reference to the letter? Or was it a matter of indifference to you whether he thoroughly understood your attitude? A. Certainly not.

Q. Why didn't you tell Mr. Tildsley that in the classroom you would have condemned the sentiment of that letter, not the mechanical arrangement of it? A. Oh, again, I deny that

second assertion, the mechanical arrangement, as being utterly an assertion.

Q. Will you admit when you handed back that letter to Mr. Tildsley with your criticism, you did not say one syllable in condemnation of the sentiments of the letter? A. I certainly deny. I said lots in condemnation.

Q. What did you say? A. It is all on the paper.

Mr. Smyth: He testified.

Q. What did you say in condemnation of the sentiments of the letter or in condemnation of the letter as a whole, to Mr. Tildsley? A. The criticisms are summed up.

Q. They are what you have written on the letter? A. Yes.

Q. You did not offer anything else? A. Yes. I will tell you several things. Dr. Tildsley asked, or rather he took the paper after I had finished writing and read it, criticism by criticism, and I sat there close to him listening.

Q. Try to be brief. A. I assume that those criticisms carried their own weight relative to the composition. Dr. Tildsley asked me after the written criticisms, "Suppose the boy read the same letter again?" and I have given my testimony on that point, that if the boy were only capable of educational improvement I would put him down as such. I think that is a condemnation as complete as can be of the boy and of his matter.

By Mr. Greene:

Q. Would not you rebuke the boy? A. Certainly. You mean an intellectual rebuke?

Q. How would you indicate to the boys in the class the decision you had reached? A. Two methods: one, having the fellows criticize vigorously his offensive statements; and second, the

teacher criticizing vigorously his offensive statements; that is the method we have followed for years. There is nothing new about it.

Q. You did not say that to Dr. Tildsley? A. There is no doubt in the world, and people agree who are in close touch with this, that if the boy had read the letter in class he would have met with a severe criticism that everybody believes he should have met with.

By Mr. McIntyre:

Q. Will you tell me what you mean by an "intellectual rebuke?" A. Yes, as coming from myself?

Q. Yes. A. A series of severe criticisms on the sentiments and statements and thinking of the boy. Of course, I am not a policeman. I do not believe anybody expects me to man-handle him.

Q. You think it was incumbent upon you to attack the sentiments in that Herman letter? A. In front of the class if the boy had read it, surely.

Q. Did you tell Dr. Tildsley? A. He never asked me a question to that point.

Q. Did Dr. Tildsley tell you to treat that letter as though it was in the classroom? A. No, sir.

Q. Then if he has made that statement he has lied?

Mr. Smyth: Now, wait.

Chairman Whalen: That will do.

By Mr. Mayer:

Q. Let me ask a couple of questions which have been suggested: Should an English teacher at this time take a neutral attitude in a discussion in an English class on the question of the wisdom of the selective draft? A. A neutral attitude?

Q. Yes. A. Certainly not.

Q. Let me ask you another question. A. May I remind you a moment?

Q. Your answer is enough. Did not the use of the word "frank", Exhibit 5, invite the adverse comments from those students who had it in their minds to criticise the President's of the United States conduct of the war? A. I do not believe so at all, and the evidence of the papers themselves is the best answer.

By Mr. Giddings:

Q. Mr. Schmalhausen, what in your mind, is the most essential offensiveness in Herman's letter? A. I think the worst offensiveness lies in the utterly brutal misconception of the President and his attitude; it is a brutal misconception of the President as a human being and the President as an official, and from that flows all the other statements, which imply his tremendous discourtesy and his disloyalty.

Q. Do you regard the lack of any cordial attitude on the part of Herman toward these United States, this American community, as a serious offense? A. Very serious, I do not think I can criticise it seriously enough, and in that other letter, Professor Giddings, you will recall the statement in which he points out in spite of his previous opposition, that he is glad to approve of the President in relation to the autocracy of Germany, and if you will recall my little comment on the "this is a sane attitude", I think there can be no doubt about my attitude on those matters.

HYMAN HERMAN, examined on his *voir dire*:

By Mr. Smyth:

Q. How old are you? A. Sixteen years.

Q. What religious instruction have you had?

A. In the Jewish faith.

Q. Have you been taught what it is to testify falsely? A. I have been taught; yes, sir.

Q. What have you been taught in that regard?

A. That it is a sin against God and against the religion.

Q. Have you been told what is the result of a person who takes a false oath; what punishment if any, there is? A. I have been told that there is a purgatory punishment.

Q. Do you know what the nature of an oath is? A. Yes.

Q. What is it? A. To bind yourself to tell the truth, and you are responsible for every word you say.

Mr. Smyth: I submit he is responsible and should be sworn.

Mr. Mayer: I agree to that.

HYMAN HERMAN, called as a witness on behalf of defendant Schmalhausen, being duly sworn, testified as follows:

Direct examination by Mr. Smyth:

Q. Herman, you are a pupil in the De Witt Clinton High School, are you not? A. Not at the present time.

Q. You were at the time that this letter was written? A. Yes, sir.

Q. How long had you been in the class presided over by Mr. Schmalhausen? A. I had been—the regular term begins about September 11, believe, and I came in about three weeks later.

Q. Was that the first time you had been under Mr. Schmalhausen? A. The first time.

Q. Now, during that time, had you received any teachings from him one way or the other

with regard to the attitude of this country as to war questions? A. No, sir.

Q. Had that been a subject that had received any consideration in the classroom up to the time of this assignment? A. No, sir.

Q. Where had you obtained ideas with reference to the attitude of this country in the war? A. Through my own ideas, I thought about that, and that was a conclusion I came to.

Q. You thought of them? A. Yes.

Q. Had it been a matter that you talked with other people about? A. No; I never discussed that question.

Q. Was it from any readings? A. As far as I know the newspapers I read are not newspapers to give me those ideas.

Q. You did not get it from the newspapers? A. No, sir.

Q. What papers had you been in the habit of reading up to that time? A. The Evening Mail and the Evening World.

Q. They certainly are patriotic. Any other paper or periodical that you read? A. I read Leslie's and Colliers's.

Q. More patriotic papers. These ideas that found their way from your brain on to the paper were something that you thought of all by yourself; is that it? A. All by myself; yes, sir.

Q. Were they suggested by any of your fellows? A. No, sir, because I never discussed it with them.

Q. Was your mind open to anybody correcting you on such subjects? A. I was willing to listen to reason, if I could be induced to change my mind.

Q. Since you wrote that particular essay, has somebody pointed out how you were in error? A. Nobody in particular, but the books that I read did point it out.

Q. The books that you read? A. The books that I read.

Q. Since that time? A. Yes, sir.

Q. What induced you to read books that changed your point of view? A. That was a history book I read this term.

Q. The history of what? A. Of Germany.

Q. Of Germany? A. Yes.

Q. Reading that, that has changed your ideas about the attitude of the United States? A. Yes, sir.

Q. How do you feel just now, in sympathy with the United States or as you expressed yourself in the letter? A. I feel myself in sympathy with the United States.

Q. How do you feel toward President Wilson? A. I do not feel at all the way I expressed myself at that time.

Q. You are sorry you wrote that letter, the letter that you did? A. Yes, sir.

Q. What kind of respect did you have, or did you have any lack of respect for your teacher, Mr. Schmalhausen? A. I had the respect that is due to a teacher.

Q. If he had this letter of yours read in class, and had shown you how you were in error, would you have paid attention to that? A. I positively would.

Q. Did you ever hear Mr. Schmalhausen in class or out of class or in any way utter any sentiment that is responsible for your writing that letter? A. No, sir.

Q. Did you ever hear him say anything that was against the President or against any officer of the government, or against any policy of the government? A. No, sir; never.

Q. Or against the attitude of the United States in the war? A. I have never heard him discuss that question.

Q. Do you remember being interrogated; Herman, after you had written the letter, by somebody? A. I was interrogated on the 13th of November by Dr. Paul.

Q. By Dr. Paul? A. Paul, yes, sir.

Q. Do you remember how he started his interrogation of you? A. He started about my parents, about Poland, I come from Poland, and therefore he wanted to know if Poland would get its autonomy, what kind of government I would give Poland. I told him I would give it the form of government the United States has.

Q. Was this after you had thought over the subject and revised your views? A. Yes; after I had thought over the subject.

Q. Was anything said about Mr. Schmalhausen by Dr. Paul at that interview? A. Not directly, or as far as I know, indirectly, but Dr. Paul wanted to know whether I would have written in any other teacher's class such a composition.

Q. What did you tell him? A. I told him as I felt at the time I would have written it in any teacher's class.

Q. No matter who was presiding? A. No matter who was presiding.

Q. Do you feel confident that it was no influence on the part of Mr. Schmalhausen that made you write such a letter? A. Positively confident.

Q. Did anyone else question you about how you happened to write the letter or about Mr. Schmalhausen? A. Dr. Tildsley.

Q. On one or more than one occasion? A. On only one occasion.

Q. What did he say, if anything, about Mr. Schmalhausen to you? A. Dr. Tildsley wanted to know why I did not have any respect for the President.

Q. Yes. A. And, furthermore, he wanted to know the same as Dr. Paul wanted to know,

what books I read, and how I came to have those ideas. That is about all I can remember.

Q. Did you have more than two interviews with anybody with respect to this matter? A. More than two with Dr. Paul and only one with Dr. Tildsley.

Q. Was another interview that you had with Mr. Anthony? A. That was in conjunction with Dr. Paul.

Q. The same interview? A. The same interview.

Q. How long were these interviews in duration of time? A. It may have lasted somewhere between an hour and an hour and a half each time.

Q. Each time? A. And on Thursday, November the 15th, I believe it was of somewhat shorter duration.

Q. Did they ask you whether Mr. Schmalhausen had influenced you in writing the letter, so that you did write that letter? A. I suppose that is what they wanted me to tell.

Q. What did you tell them? A. I told them nobody had influenced me, I would have written it in anybody's class.

Mr. Smyth: That is all.

Cross examination by Mr. Mayer:

Q. Herman, you say that at the time you wrote this letter, for some time previous to it, you entertained in your own mind the sentiments expressed in that letter toward the President of the United States. Is that right? A. Yes, sir.

Q. You had been entertaining those sentiments for some time? A. Yes, sir.

Q. And this assignment of this subject to write on is what gave you the opportunity to express in your school those sentiments which were reposing in your mind at that time; is that right?

Mr. Smyth: Is not it fortunate that the oppor-

tunity was given him, and that he is now a good citizen?

A. The language of the topic was a frank comment, and I said what I felt.

Q. You, having been asked to give a frank comment, wrote what was in your mind with regard to the President? A. Yes, sir.

Q. Do you remember saying to Mr. Tildsley that when you wrote that letter you wrote it because you had complete and utter contempt for the President of the United States? A. Yes, sir.

Q. You did say that? A. I did.

Q. Why did you write that letter? A. For precisely the same reason that I told Dr. Tildsley I felt an utter lack of respect for the President of the United States.

Q. Would you write such a letter as this now? A. No.

Q. Why not? A. Because now that I have changed my mind, of course, it is out of the question.

Q. If you have changed your mind about Germany being an autocracy, would you write such a letter again? A. No, sir.

Q. If you do not agree with a man, are you free to write such a letter? A. If I do not agree with any man?

Q. If you do not agree with any man or the President? A. Such a letter, you mean the language?

Q. The language of this letter; do you believe that? A. If my contempt for him is of a serious nature I believe I am justified.

Q. So therefore you believe that at the time you wrote that letter your contempt justified you in writing such a letter to the President? A. Yes, sir.

Mr. Smyth: At that time.

Q. At that time. That is what I mean; that is what I am asking about? A. Yes, sir.

Q. And the theme or subject which was presented to you gave you the opportunity to write that letter. Is not that so? A. I felt so.

Q. What you felt? A. Yes.

Q. Would you have written this letter in Mr. Loughran's class? A. Had he given me the topic I would have written such a letter.

Q. Even though Mr. Loughran had inculcated a spirit of patriotism in his class? A. I do not remember Mr. Loughran having inculcated any special spirit of patriotism.

Q. You do not? A. I do not.

Q. Would you have written it in Mr. Lapolla's class? A. Yes, sir.

Q. You would have written it? A. Yes, sir.

Q. Have you ever said at any time since you have written this letter anything positive in favor of the policy of the United States in this war? A. Not openly.

Q. Not openly? A. I do not remember.

Q. Do you entertain any ideas which are positively in favor of the policy of the United States in this war at this time? A. Yes, sir.

Q. You do? A. Yes.

Q. How do you come to get those ideas? A. By studying the history of Germany.

Q. Who gave you that book to study? A. The school, as far as I always understood.

Q. You got it in the school? A. Yes.

Q. Who was the teacher who gave it? A. They did not give us the book; that is a regular study.

Q. In whose class? A. Mr. Delaney's class.

Q. Did Mr. Delaney point out any precepts to you from that book for your enlightenment? A. He pointed out the fact that Germany was a complete autocracy.

Q. He did? A. He pointed out the other fact that Siam was more of an autocracy than Germany was, but Siam is rather small to be regarded.

Q. Did he ever, as your history teacher, point out to you that this is a representative democracy? A. Yes, sir, he did.

Q. And that has changed your idea of respect for the President of the United States? A. Yes, sir.

Q. And for this country? A. Yes, sir.

Q. And for this country's conduct in this war? A. Yes, sir.

Q. Did you write that note? A. I did.

Mr. Mayer: I offer that in evidence.

(The paper was received in evidence and marked Exhibit No. 10 of this date.)

Mr. Mayer: I will read that letter.

"Nov. 21, 1917.

Fellow-Students:

I am very sorry for the text of my letter dated Oct. 22nd, which I now, after much deliberation, consider unpatriotic; I highly regret the terms of address and expressions, which are grossly disrespectful, at all times; and it grieves me to know that the school has been unjustly accused of disloyalty because of a few, myself included and seemingly foremost, when your recent response to the Liberty Loan proves this accusation as false.

HYMAN HERMAN."

"Dear Dr. Paul:

If you consider this statement satisfactory you may admit Herman after he has read it to the Assembly. No less statement is to be accepted.

Yours very truly,

JOHN L. TILDSLEY.

Nov. 22, 1917."

Q. Your note addressed to your fellow students came as the result of the teachings which you imbibed since you wrote the letter to President Wilson of October 22nd, 1917, through your history teacher in the history class; is that right? A. From the history book in my history class.

Q. And your teacher there? A. And my teacher perhaps.

Q. Perhaps, do you say? A. He just simply pointed out what was in the book.

Q. Did he ever give you any direct instruction in patriotic attitude toward the government?

A. No direct instruction.

Q. No direct instruction? A. No, sir.

Q. But by the general atmosphere of his class and the direction of his course of instruction he corrected your attitude both as to the President and the government of this country? A. Being a history teacher he showed us and emphasized the fact that the author tried to emphasize in the book.

Q. He emphasized the fact that you found in your books? A. Yes, sir.

Q. It was the result of his teaching that you have come to the conclusion which you express in your letter to your fellow students; is that right? A. Yes.

Mr. Mayer: That is all.

Chairman Whalen: Any other witnesses?

Mr. Smyth: No other witnesses; except I want to offer in evidence the By-laws which have to do with the grounds for trying a teacher. I think they are Section 39, subdivision 18.

Mr. McIntyre: What is that?

Mr. Smyth: Section 39 subdivision 18 and Section 41, subdivision 18. Why not put in all the By-laws and then we will use what we want?

Mr. McIntyre: Section 39, subdivision 18?

Mr. Smyth: Section 39, subdivision 18.

Mr. McIntyre: What is the other?

Mr. Smyth: Section 41, subdivision 18.

Mr. McIntyre: We object to these by-laws because it seems quite apparent from Mr. Smyth's statement that the by-laws are introduced for the purpose of showing that the teachers may be tried for the grounds specified in each of those by-laws, namely, misconduct, insubordination, for neglect of duty, and general inefficiency. Is not that right?

Mr. Smyth: That is right.

Mr. McIntyre: We object to them on the ground that the by-laws have been superseded by the statutes, by the last amendment to the Educational Laws, June 8, 1917, and that provides that a teacher may be removed for cause, and the cause is any substantial cause that appeals sufficiently to your discretion, and we object to the by-laws on those grounds.

Chairman Whalen: We will take that under advisement. I suppose the testimony is closed.

Mr. McIntyre: The case is closed.

Mr. Smyth: We renew the motion to dismiss the charges upon all the evidence, upon the ground that it does not appear that the charges specified have been supported, and it does not appear that under the authority given by the by-laws and by the statute and by the Charter, Section 1093, that there has been any gross mis-

conduct, insubordination or neglect of duty or that there has been any general inefficiency shown.

Chairman Whalen: Motion denied.

Mr. Smyth: Exception.

Chairman Whalen: We will take an adjournment until 8:30 P. M.

Whereupon at 7:45 o'clock P. M. on the 3rd day of December, 1917, a recess was taken until 8:30 o'clock P. M.

NIGHT SESSION.

Chairman Whalen: Do you want to discuss before the Committee the evidence? Do you want to sum up?

Mr. Smyth: I would not attempt to sum up at this late hour with the continuous session we have had ever since three o'clock this afternoon. I do not think I could do the Committee any good or myself or anyone else good. It seems to me we ought to do it some other time or else waive summing up.

Mr. Mayer: I am perfectly willing to waive it.

Mr. McIntyre: I will waive it.

Chairman Whalen: Then you will submit it as it is to us?

Mr. Smyth: Submit it as it is, I rely on my motion to dismiss, which I now renew on all the evidence. It comes within none of the subdivisions or classifications of the by-laws which I have referred to, and that the matters testified to or the matters contained in the charges are not the subjects of charges for the purpose of dismissal or discipline of the teachers, and further that the charges as specified have not been borne out by the evidence. I suppose the by-laws are in evidence?

Chairman Whalen: The reason I referred to it now, was that in the beginning of the trial I said that at the close of the trial if you choose to give us your view on the law of the case we would be glad to hear you. It is only for that reason that I call it to your attention. I know you must be tired after such a long trial. The by-laws have been submitted to the Committee for identification, and if we admit them we will let you know, and if we overrule your offer we will give you an exception.

Mr. Winthrop: Is it your idea that the new Educational Law takes the place of the by-laws or the by-laws are still in force?

Mr. Smyth: As I understand it the new Educational Law takes effect to the extent of providing for the by-laws to be amended, and until the by-laws are amended those by-laws are still in force.

Mr. Winthrop: Your point is that these by-laws are still in force in spite of the new Educational Law?

Mr. Smyth: That is true.

Mr. Winthrop: That is your point?

Mr. Smyth: Yes.

Mr. Somers: In regard to that, the law is very explicit. I cannot put my hand on the section, but it provides that a teacher may be removed after a hearing for cause.

Mr. Winthrop: The point Mr. Smyth makes is that the by-laws specify the grounds upon which you can remove a teacher.

Mr. McIntyre: We must have a by-law which is not inconsistent with the statute. Furthermore, let us assume that the by-law is in effect, and all these things come under the head of gross misconduct, refusing to serve the United States in this great crisis, the greatest crisis in the history of the world.

Mr. Smyth: May I say one word in that respect: There is not any evidence from the prosecution of any act on the part of any of these teachers; there has been nothing but an attempt to get up a hypothetical case and ask their opinion on a hypothesis. There has been no evidence of any kind that in the discharge of their duties any one of these teachers were other than a loyal, honest, faithful servant to this community. It is something comparable to the old Salem witchcraft trials, that a person who is supposed to have views that were not in cognizance with the views of the community, are put on trial and asked supposititious questions, not as to what they had done, not as to what their duty requires them to do, but taking a case that is not in point at all, what would you then do; in other words, you could not get a better example of trying to set a trap and catch these persons, get these persons into making admissions outside of anything they have done, than we have had here exhibited before us in the testimony of Dr. Tildsley and Mr. Paul, and the other gentlemen who have testified. So far as the character of these men is concerned, everybody seems to unite that they bear unblemished reputations as teachers and as gentlemen. They have done nothing. We may disagree with some of their views, so far as statements of philosophy are concerned, but there is nothing to show that they are unfit, from this evidence, and certainly what they have said is absolutely incognizant with our ideas of loyalty and patriotism. If these persons had gone on the stand and admitted that their idea was that patriotism should not be taught in the schools, that they were against it, if they were told to, that would be one thing. But you have had them before you. You

have heard them cross examined at great length, and they have told you that so far as their conduct towards their scholars was concerned, if the subjects were to come up they would be loyal merely because in an inquisition carried on by Dr. Tildsley under circumstances, which it seems to me certainly smack of prejudice and are founded on something else other than specific disloyalty, they have managed to extract here and there phrases and statements, apparently through faulty recollection, evidences of which Dr. Tildsley gave us on the stand, of distorted meaning, it is hardly a fair thing to say that these gentlemen are to be deprived of their liberty and are to go forth stigmatized in this world at this critical time as disloyal citizens, the worst punishment that can be meted out. If these men were on trial before a jury in an ordinary court of record there is not any Judge, and I know Mr. Whalen will agree with me, who would permit that kind of testimony to be received to blacken the reputations of these men. If, for instance, Mr. Schmalhausen in class had received this paper written by Hyman Herman and had said, "Well, boys, you have heard this statement, I do not disagree with it," and that utterance of his had gone forward to the others, then you would have something to fasten on; then you would have just grounds for saying that that man is unfit to be a teacher because he has given us evidence of it. But nothing of that kind occurred. We find that he did not even know about the statement that Herman had made until some two weeks afterwards, when he was shown the statement, not in the schoolroom, not in the presence of boys who were to be taught, but in the inquisitorial chamber. Questioned, and made to say things, according to the interpretation of Dr. Tildsley, which are at variance

with the statement that he has annotated on the paper itself. The whole thing is hypothetical. There is not anything real in any of these charges. To say a teacher is to be dismissed on a hypothesis of that kind, it seems to me, is to give countenance to something un-American, unpatriotic and opposed to all our institutions and our ideas of what a trial should be, which only seeks to deal out fairness and not deal out trickery, and to entrap a man.

Mr. McIntyre: May it please the Committee with regard to that: Some of these cases do present issues of fact. Now, the only way that you can decide those issues of fact in favor of these teachers is by assuming that Dr. Tildsley, Mr. Anthony and Mr. Paul have entered into the dirtiest kind of a conspiracy against these people without any reason, without any motive that I can conceive. I cannot conceive how you can come to any conclusion other than the fact that Mr. Tildsley and Mr. Anthony and Mr. Paul are telling the truth. You have heard them and you have heard the witnesses, and we are going to let you decide the issues of fact. But remember this. You cannot decide against Mr. Tildsley and the others without coming to the conclusion that they hatched a conspiracy against these men. I cannot conceive why they should have done that. Therefore, I feel that you must decide the issues of fact against these defendants.

Now, having decided the issues of fact against them, it will become apparent that although they were presented in many instances with hypothetical questions, hypothetical situations, it was only through these hypothetical questions that their attitude toward the United States in the present conflict with the German Government could be ascertained. It could not be done any other way. As far as I am aware the course of

study did not permit it. There was not anything tangible that afforded the educational officers the means or the opportunity of finding out just where these people stood. The only way it could be found out was by presenting these hypothetical situations and ascertaining from their attitude, from the way they would act in these given situations, whether or not they were friendly or unfriendly to the United States Government, in this, the greatest of all crises. Now, having ascertained from their answers that they were hostile to the Government it was a plain violation of the duty which they owed to the State, because in point of fact they do receive their livelihood from the State, and in these insidious ways seeking to undermine the Constitution of the State, and the Constitution of the State requires every public official to take an oath that he will support the State Constitution and the Federal Constitution. Therefore, if these three gentlemen made these statements which showed they were not in sympathy with the United States Government in this war against Germany, that they were, we might say, disloyal, I think some of the testimony goes that far, they plainly disqualified themselves longer to continue as public school teachers because a public school teacher owes an affirmative and positive duty to work for the State; not an attitude of even passivity, but labors under the obligation of taking affirmative steps to protect the interests of the State and Federal Governments. You cannot get away from that. The legal proposition is as plain as can be.

Chairman Whalen: We want to thank you gentlemen very much indeed for the very courteous way in which you have tried these cases. I feel very grateful to the Corporation Counsel also, and your viewpoints which you have just given

us are going to help our Committee in the determination of this case.

We understand now that the cases have been submitted to us and we will take them under advisement and render a decision as soon as possible.

Hearing in the Above Case Closed.

DEPARTMENT OF EDUCATION OF THE CITY
OF NEW YORK.

In the Matter
of
The Charges of Conduct Unbecoming a Teacher Preferred by Associate Superintendent TILDSLEY,
against
THOMAS MUFSON, Teacher in the De Witt Clinton High School.

New York City, December 3, 1917.

Met pursuant to adjournment at 9 o'clock P. M.

Before the Committee on High Schools and Training Schools.

Present—Mr. WHALEN, Chairman.

Mr. ATKINSON,
Mr. GIDDINGS,
Mr. GREENE,
Miss LEVENTRITT,
Mr. SOMERS,
Mr. WINTHROP.

APPEARANCES:

CHARLES MCINTYRE, Esq., and WM. E. C. MAYER, Esq., Assistant Corporation Counsel, for the Board of Education.

HERBERT C. SMYTH, Esq., and R. WELLMAN, Esq., appearing for Thomas Mufson.

President W. G. WILLCOX and Secretary A. E. PALMER of the Board of Education.

Chairman Whalen: The Committee is now ready to hear the case of Professor Mufson.

Mr. Smyth: At the outset, if it please the Committee I deem it my duty to present a matter which is exceedingly disagreeable to me, in the first place, because of the nature of the protest that I am about to make, and, in the second place, because I have a very long acquaintance with the Chairman about whom, under all other circumstances in the last twenty-five years that I have had the pleasure of his acquaintance, I could not think of raising such a question; but the public print and the evidence at our disposal leaves no other course open to me. I think I should very much like to leave the matter to the discretion of Mr. Whalen himself, but in view of the public statements made by the Chairman, and particularly in an edition of the Evening Telegram of November 25th last, and in other publications published throughout the City, it has been borne in upon me, as representing these three teachers, that Mr. Whalen has rendered himself unfit to preside, as a member of this committee, because apparently he comes in as a judge with a prejudice against them, which to my mind makes it impossible to insure, so far as the Chairman is concerned, these gentlemen will have a fair and unprejudiced hearing.

There is much evidence at my command, and which I assume will come out during the course of the hearing, that the genesis of these charges was in a resolution which was passed by the Teachers' Council, which condemned or criticized the Chairman's action in utterance which he had made with reference to the prolongation of hours of work of the teachers and school hours of the pupils, a subject which is utterly foreign to the charges, as will be easily seen by reading

the charges themselves. It appears that in getting at who should be made defendants or respondents in this proceeding that in the course of the investigation the principal inquiry made of the witnesses, including the accused teachers, was not with reference to the particular charges, but the first and important question asked was "Did you vote or have any part in giving light to the so-called Whalen resolution," the resolution which I have referred to which criticised the honorable Chairman.

Now, under these circumstances, I respectfully lodge a protest, and I say respectfully, because I have the greatest amount of respect for Mr. Whalen as a lawyer, as an officer, and as a citizen, but at the same time, were I in his place I would deem myself equally unfit to act in the dual role of accuser and judge. It is a position which is absolutely opposed to all our democratic institutions. It was one that was guarded against at the time that this Republic was born, in fact, and it seems to me that as I feel, it must be the desire of all the members of the Committee, including the Chairman himself, that they shall have judges who are just as impartial sitting here with regard to these gentlemen, as would be the case if they were to be tried in a court of record down in the court house where Mr. Whalen has often graced the bar at that tribunal, and under these circumstances I now make a formal protest against Mr. Whalen acting as chairman.

Mr. Mayer: If the Committee please, the protest which my learned adversary has so suavely lodged does not seem to me to be at all in point. He speaks of your Chairman as the accuser. Of course the Committee knows that neither the Chairman nor any other member of this Committee preferred these charges. They come from an

entirely different source. He is the judge, it is true. We have understood for some time that some such claim as is now made was going to be made against the honorable Chairman of this Committee. We do not believe that it is pertinent. We do not believe that the law as it is generally understood will view with displeasure the sitting of Mr. Whalen as a member of this Committee. Here he is acting as a public official. He is sworn to do his duty. The law demands that he will do his duty to the fullest extent, and with justice and without malice toward the accused. It lies wholly within Mr. Whalen's conscience whether or not he sits in this Committee. He cannot be ousted from this Committee by a protest of this kind, which is far afield from the matters which will come up for judgment here. I therefore urge that Mr. Whalen, in accordance with the dictates of his own conscience, remain and sit as a member of and Chairman of this Committee.

Chairman Whalen: I appreciate very much Mr. Smyth's position and recognize that it was his duty of course to make the objection; I know there is nothing personal about it at all.

Mr. Smyth: Not at all.

Chairman Whalen: Not at all. I submitted the matter to my Committee and they cannot see any reason in the world why I should not sit. I never expressed an opinion in the cases now before us and I am not aware that I have ever mentioned the names of the defendants. I gave a correct description of the kind of teacher that I thought ought not to be in the school, and of course if you admitted that that description fitted your client, then I would have to admit that I have expressed an opinion which might be taken as being opposed to them. If they do not fit the

description then of course no harm has been done to your clients, because their names were never mentioned.

However, your objection is overruled and you may have an exception.

Mr. Smyth: That our position may be correctly understood, Mr. Chairman, the views expressed by you in the abstract have my hearty concurrence. It is because of information that has come to us that you have attempted to apply those views to the three teachers, or we fear that this testimony points in that direction, that I filed a protest. If the description were to fit my clients I would not be here defending them.

Chairman Whalen: Therefore, it is quite clear that whatever I may have said does not apply to your clients, in view of the statements you have just made.

Now, Number 2 and Number 3 of your affirmative defense are overruled, and you may have an exception to those, so that narrows the issue right down to the specific charges that have been made by the City Superintendent against your clients.

I sincerely hope, and the Committee hope, that you gentlemen, Mr. Smyth and the other counsel, will try this case without any feeling at all, try it in an orderly and dignified way as you always try your cases in court and where you can stipulate in regard to testimony so as to shorten it, and we will be glad if you will do so.

Mr. Smyth: I will do everything I can.

Chairman Whalen: At the close of this and the other trials, if you feel you would like to argue the legal application as to the questions of fact brought out in the trial we will be very glad to hear you.

Mr. McIntyre: We will now proceed with the Mufson case.

Chairman Whalen: Yes.

Mr. McIntyre: These are the by-laws of the Board of Education showing the jurisdiction of this Committee. I offer them in evidence.

Chairman Whalen: I ask you if your clients have any objection to reporters being present in the room? They have requested permission to be here.

Mr. Smyth: We have not. We leave that to your Honor entirely.

Chairman Whalen: May I ask Mr. Smyth if you will agree that the pupils from the school who have been subpoenaed here may be excused from the room during the trial?

Mr. Smyth: If your Honor thinks that is the better course.

Chairman Whalen: All the pupils subpoenaed here will please leave the room and the officer will take care of them in the meanwhile until they are called as witnesses.

In order to shorten this trial we think that maybe you can agree with the Corporation Counsel that the question here to determine is, not what took place before or after, but just what took place on this day, that it will help.

Mr. McIntyre: I offer in evidence certified copy of Section 13, Subdivision 7, of the By-Laws of the Board of Education.

The paper was received in evidence and marked Exhibit No. 1 of this date.

Mr. McIntyre: I offer in evidence certified copy of Section 21, Subdivisions 4 and 5, of the By-Laws of the Board of Education.

The paper was received in evidence and marked Exhibit No. 2 of this date.

Mr. Smyth: As I understood the Chairman

to say, he asked me to stipulate that what we were to try is whether the charges that are made happened on the day intended or mentioned.

Chairman Whalen: No, I mean these interviews that were said to have taken place.

Mr. Smyth: May that be specified?

Mr. Mayer: We will bring the date out in the testimony.

Mr. McIntyre: I offer in evidence the charges and specifications in the case of Thomas Mufson, served personally on Mr. Mufson on November 19th, 1917. Service is conceded?

Mr. Smyth: Yes.

The paper was received in evidence and marked Exhibit No. 3 of this date.

Mr. McIntyre: Mr. Smyth, I presume you want the answer in?

Mr. Smyth: Yes.

The paper was received in evidence and marked Exhibit No. 4 of this date.

Mr. Smyth: The Committee makes the same ruling with regard to defenses 2 and 3?

Chairman Whalen: Yes, and we give you an exception.

Mr. Smyth: Exception.

JOHN L. TILDSLEY, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. McIntyre:

Q. Mr. Tildsley, you are Associate Superintendent of Schools? A. I am.

Q. And you know the defendant, Mr. Thomas Mufson, the gentleman on trial here? A. I do.

Q. Is he a teacher in the De Witt Clinton High School? A. He is.

Q. Have you recently had a conversation with him? A. I had a conversation with him on the

day before Election, on the 5th of November, I believe it was.

Q. Who was present besides yourself and Mr. Mufson? A. Mr. Paul was listening to the conversation. Mr. Anthony sat at the other end of the room.

Q. Mr. Paul is the principal of the school, is he? A. He is.

Q. Where was this conversation held? A. In Mr. Paul's office.

Q. Do you remember the substance of the conversation? A. The substance of the conversations, as I remember, was about as follows: This interview took place after the interview I had had with Mr. Schmalhausen, at least one interview, and I opened the conversation with Mr. Mufson that alluding to the fact that he was a teacher of English, and in the English classes in the school they gave a great deal of attention to the matter of oral English, and the matter of discussion of topics in the recitation, and I therefore submitted to him a hypothetical question, the question being as follows:

“If the question of whether anarchism or whether the present form of government of the United States was better for the people of the United States, was being discussed, and you found that the boys in your class who favored anarchism were the better debaters, and that that side was prevailing, would you feel it incumbent upon you to take any action in the matter?”

And he said he would not, he would remain neutral in the discussion, but he added “I would not allow that subject to be discussed.”

I then went on to a second question, namely, that if groups of boys in your class were dis-

cussing this question, namely, the wisdom of an early peace, the purchase of Liberty Bonds, and the active support of the Government in its various measures for carrying on the war, if you found that the boys who favored an early peace, who were opposed to the purchase of the bonds, and who were opposed to an active support of the Government in carrying on the war, were getting the better of the discussion, would you in that case feel called upon to take any part in it, and he said, "No, I would remain neutral in this matter," and we discussed that general position at some length, and then I said to him, that you tell me that you do not make your views known to the boys, and nevertheless, although you have made no statement to this effect, I have drawn the inference that you are opposed to active co-operation with the Government in the conduct of the war, that you are opposed to any co-operation in the sale of Liberty Bonds, and in favor of an early peace, and he looked me in the eye and said, "I have made no such statement." I said, "No, you have not, but I have drawn the inference and I am going away with that inference." He looked at me and shook his head, and that was the end of the interview.

Mr. McIntyre: That is all.

Cross examination by Mr. Smyth:

Q. What were you trying to do, Doctor, trying to trap him? A. I was not trying to trap him; I was trying to—

Q. You have answered. You have said you were not trying to trap him. Why did you say that you were going away with an inference that was not justified by anything you have told us here? A. I believe the inference was justified, and told him so.

Q. And he shook his head? A. No, he did not shake his head.

Q. Didn't you say he shook his head? A. I did not say which way he shook his head.

Q. As I am doing it, this way; is that yes or no; is that shaking my head? A. It depends entirely what the expression of your face was.

Q. Was he shaking his head from right to left? A. It was a very slight shake.

Q. Was it not shaking his head from right to left? A. I do not remember.

Q. If he was moving his head up and down he would be nodding, would he not? A. He would.

Q. He did not nod? A. He—

Q. He did not nod, did he? A. I do not remember whether he nodded or not.

Q. You said he shook his head. You know the difference between shaking his head and nodding, do you not? A. I have not a photographic memory of the exact angle at which he shook his head.

Q. When you say a man shakes his head, what do you mean; that he means yes or no? A. It does not necessarily mean that he means either. It means that you have me.

Q. What? A. It might sometimes mean that I cannot meet your argument, you have me. I told him I had drawn an inference and he shook his head in a doubtful sort of way, as if he felt I had drawn an inference and that he could not deny it.

Q. You think that this man should lose his means of livelihood on the shake of his head? A. No, sir.

Q. That is all your testimony amounts to, is it not?

Mr. Mayer: I object to that; the witness has not testified to that.

A. Do you wish me to state what I do think?

Q. You seem to be so utterly unfair that I do not think that I do. If he had nodded his head then you would have something to say, would you not, Doctor? A. Not any more than I have.

Q. Now, did he satisfy you when he said he would not allow the subject of anarchism to be debated? A. No, sir.

Q. He did not? A. He did not.

Q. Do you think that boys of that age should be permitted to debate on the subject of anarchism? A. No, sir.

Q. Then didn't he do what you think he ought to do, not allow it? A. That was not the point at issue was what I—

Q. Now wait a minute, Doctor, you are not interested in having this man discharged, are you? A. I am interested.

Q. You want him discharged? A. I do want him discharged.

Q. Then you are an interested witness? A. I am interested in my capacity as Superintendent of Education.

Q. You are determined to do everything you can to hurt this man? A. No, sir. I am determined to tell the truth.

Q. You won't give an exact interpretation to an act such as shaking his head, if you can help it, will you? A. Oh, yes.

Q. Didn't you assume that he gave you a negative answer when he shook his head? A. Because he did not.

Q. Because he did not? A. Yes.

Q. You are going to make an affirmative out of a negative then? A. I am not.

Q. You do agree that anarchism is not a subject to be discussed by boys of that age, do you not? A. Yes, sir.

Q. And in that respect you have agreed with Mr. Mufson? A. In that respect I do.

Q. That is the main thing with regard to whether he is a proper teacher on such a subject as that, as to whether he would allow an improper subject to be debated, is not that so?

A. No, sir.

Q. That is not the main thing? A. That is not the main thing.

Q. The main thing is to find out if he allowed something which he did not intend to allow, what would he then do if he were to do that? A. That is too complicated for me. State it more simply.

Q. Is not that the complicated attitude of your mind toward this man? A. No, sir; my mind is not at all complicated.

Q. Were you not trying to trap him, Doctor? A. I was not. I was trying to get his honest statement of his philosophy of conducting a recitation.

Q. Why did you get his philosophy about something which you both agreed should not be discussed? A. When I asked him the question we had not agreed on it.

Q. Mentally you had agreed with him, had you not? A. The question had not come up until I asked it.

Q. But it did come up and you found that you both agreed on that subject; why did you try to trap him any further? A. We did not both agree.

Q. Did you not say a moment ago that he said he would not allow anarchism to be debated? A. Yes, sir.

Q. You understood by that that he considered that an improper subject to be debated? A. I do.

Q. In that, you consider that he gave expression to an opinion that should be lauded? A. To that extent; yes.

Q. Is not that the important extent? A. No, sir, it is not.

Q. Of what particular avail is it to find out what his view is about something that never could happen if he lived up to his idea not to allow anarchism to be debated? A. I got exactly—

Q. What you wanted? A. What I wanted to get from the man, and that was what his method of conducting a recitation was, and he said that he would remain neutral in a discussion of that kind. Then he realized that that particular question was not the kind of question he believed in giving and he stated his general attitude in answer to that.

Q. Do you mean to say that he was not sincere when he said he would not allow anarchy to be debated? A. I do not believe so.

Q. Do you believe he was sincere? A. He was sincere, I believe.

Q. Did you ever find him to be insincere in anything he ever did? A. No, sir.

Q. Is there any more sincere teacher in the employ of our Government than this Mr. Mufson? A. I cannot answer such a question as that.

Q. Do you know of any? A. I cannot answer such a question as that.

Q. Won't you do all you can in his favor, so long as it complies with the truth? A. I have said that this gentleman is sincere. I am not going to make a comparison between him and 22,000 other teachers.

Q. Do you know of any act of insincerity on his part that you can point to? A. No, sir.

Q. Do you know of any which would condemn him as a teacher? A. Only in connection with this?

Q. Yes. A. Yes, I do—

Q. Was that the act of a teacher? A. That was the act of a teacher, yes, sir.

Q. This conversation that you had with him in

private on a subject on which both you and he agreed was an objectionable subject, do you think that was the act of a teacher? A. I do. He was asked in his official capacity by an official of the Board of Education about his method of conducting a recitation in a public high school.

Q. On a subject that both you and he agreed should not be broached? A. I did not agree it should not be broached.

Q. Didn't you just tell me a little while ago that you agreed that it should not be broached? A. Should not be discussed in the classroom, which is an entirely different question.

Q. Now, Dr. Tildsley, with all the fairness that you are capable of in this particular, and it is only in this particular that I am addressing it to you, can you give any instance to this Committee where, in teaching, this gentleman has ever failed in his duty? A. I cannot. I am not familiar with his career as a teacher.

Q. Don't you know his record? A. No, I do not know his record.

Q. Have not you looked them up? A. I have not looked them up recently, no.

Q. Are you going to condemn this man to loss of position without looking up his records? A. I do not condemn him.

Q. You say you want him discharged. Have not you looked him up to see whether he is worthy of discharge? A. The question of the record does not enter into the matter in my opinion. The question is on the fundamental method of conducting a recitation in English in the De Witt Clinton High School.

Q. Then as I have it, you, as Superintendent of High Schools, think that a man's record counts for nothing in determining the question whether he should be discharged on charges?

A. If he has ideas of his duty to the Government it counts—

Q. Will you answer the question? A. I have answered.

Q. Please repeat it. You have not at all. Will you read it?

Mr. McIntyre: I object to the question on the ground that it is incompetent, irrelevant and immaterial. If the charges on which this gentleman is being tried are sufficient his record becomes immaterial. I object to the question.

Chairman Whalen: Go ahead, Mr. Smyth.

Q. Now, will you answer the question? A. Does the Chairman direct me to answer that question?

Chairman Whalen: Yes. Answer if you can.

The Witness: I will answer it as I answered before, that it is not comparable with the question of his views at the time of war as to his duty to the boys of this age.

Q. Now, Dr. Tildsley, you are still fencing?

A. All right. I have answered the question.

Q. I ask you to answer the question I submit.

Mr. McIntyre: I submit he has answered.

Chairman Whalen: He cannot answer better than that.

Mr. Smyth: He can say whether the record should be taken into account or not. I am addressing this to the Chairman. Do you think that a faithful, sincere, honest, capable teacher's record is not to be taken into consideration in determining what his course of conduct should be under a supposititious case, which the accusing witness admits was a case which would not come up?

Chairman Whalen: You may argue that when the case is closed.

Mr. Smyth: I did not think there was any answer to it.

Chairman Whalen: It is my understanding he is talking about his attitude on a certain question on a certain day.

Mr. Smyth: Yes.

Chairman Whalen: He interrogated him and there is his answer. Now, is that answer sufficient to justify the charges made? That is all there is to it as I see it.

Mr. Smyth: Do you mean to say that this Committee would not take into consideration the previous record of a teacher?

Chairman Whalen: Yes, they will take into consideration that record.

My Smyth: All right.

By Mr. Smyth:

Q. Now, with that concession of the Chairman, will you admit that the record is an important matter?

Mr. McIntyre: I object to that on the ground that it is immaterial, incompetent and irrelevant.

Chairman Whalen: Yes. I do not think you ought to do that, Mr. Smyth. I think if a Trial Judge said that, I think you would be perfectly satisfied, Mr. Smyth.

Mr. Smyth: Yes, I am, but I wanted to bring the other question out.

Chairman Whalen: He has nothing to do with the records.

The Witness: I have nothing to do with the record in this case.

Mr. Smyth: What I want to find out is this: This witness has said he was anxious to have this teacher discharged, and therefore I want to find out how fair he is in the matter, whether he has ever looked at the matter favorably.

Chairman Whalen: He made the charges under direction of the Superintendent.

Mr. Smyth: I know that, but he goes further than that. He wants to see him discharged.

By Mr. Smyth:

Q. That is true, you want to see him discharged? A. As an official of the Board of Education, only for that reason.

Q. But in any role you please, you still want to see him discharged? A. Yes, because I believe he is unfit to teach the boys in the De Witt Clinton High School in this time of war; yes, sir.

Q. Because he refused to answer with voice what he may have answered with gesture, a subject on a hypothetical question anyway which could not arise, because you both agreed it was a subject which was forbidden? A. Not at all.

Q. Is not that what your testimony amounts to? A. No, sir.

Q. You do not think so? A. That is not the testimony.

Q. You say that you asked him whether he was in favor of early peace? A. I did not.

Q. Did you mention that subject? A. I did.

Q. In what respect do you now say you mentioned that subject? A. I told him that I had drawn the inference that he was in favor of an early peace. I did not ask if he was in favor of an early peace. I told him that I had drawn the inference from his own attitude in the matter.

Q. Assuming that he is in favor of an early peace, should he be discharged for that? A. I should say yes.

Q. Are you in favor of an early peace? A. I am not.

Q. You are in favor of prolonging the war indefinitely? A. I am not.

Q. Then it is one or the other? Which is it? Do you want an early victorious peace? A. I do.

Q. Then you want to see an early peace? A. Not necessarily.

Q. I do not quite get you. Are you a loyal American citizen? A. I am.

Q. Then you do want to see an early peace, do you not? A. Not necessarily.

Q. Well, but you— A. What is the use of arguing that?

Q. Because I want to see how—show you how unfair you are. A. I am not unfair. I want a victorious peace as early as it can be brought about.

Q. Is there anything he said that was different than that? A. Yes.

Q. What? A. He wanted an early peace whether it was victorious or not.

Q. Did he say that? A. I—

Q. Did he tell you that? A. I do not believe he said it in those words, no, sir.

Q. Did you, in your direct examination, say anything of that kind? A. Not in that language; no, sir.

Q. Have you not just thought of it when I put the word “victorious” in your mouth? A. No, sir, we both had in mind, or at least I had in mind, the idea of a peace such as the United States Government was working for.

Q. Did you call his attention to the fact that you were inferring that he desired an early peace without victory? A. No, sir.

Q. Then why should you assume that he wanted an early peace without victory? A. By the context of the conversation,

Q. And that context you have given us? A. Not all of it.

Q. Why did you not give us all? A. I gave you the main things as I remembered them. The conversation lasted about half an hour. I have not reproduced it all.

Q. Has anything been said in that conversation about a victorious United States, a victorious peace? A. Not a word as to victorious, because the instance was the boys in the classroom discussing a movement in favor of peace.

Q. You have answered the question? A. No, I have not.

Q. You have and I am going to ask another one. It is true, is it not, Dr. Tildsley, that you want an early peace? A. No, it is not true.

Q. Then you want a prolongation of this world misery, do you? A. To a certain extent; yes.

Mr. Smyth: Thank you, that is enough.

FRANCIS H. J. PAUL, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. McIntyre:

Q. Dr. Paul, you are the principal of the De Witt Clinton High School? A. Yes, sir.

Q. The defendant is a teacher in that school? A. He is.

Q. A teacher of what? A. A teacher of English.

Q. Were you present at the conversation between Dr. Tildsley and the defendant? A. I was.

Q. When was that conversation held? A. November 5th.

Q. Where? A. In the office of the principal of the De Witt Clinton High School.

Q. When was it held? A. November 5th.

Q. Do you remember the substance of that conversation? A. I do.

Q. Between whom was that conversation carried on? A. Dr. Tildsley and Mr. Mufson.

Q. And do you remember anything that was said with regard to this discussion on the relative merits of anarchism and the established form of Government? A. Yes.

Q. What was the substance of what Dr. Tildsley was trying to find out? A. As I saw it, what Mr. Mufson considered his duty to be from the regulative side of the teacher's function in matters of conduct.

Mr. Smyth: I object to this. May he not state the conversation?

Q. State what Dr. Tildsley said, and what he said to Dr. Tildsley? A. Dr. Tildsley began the conversation, as I recollect it, with the statement: "A question has arisen as to the proper attitude of a teacher in the conduct of a class in oral composition, and I would like to have your point of view." And in the course of the conversation, Dr. Tildsley asked Mr. Mufson, whether, in the case of a debate—not a debate, but in case a discussion arising in the course of the oral composition work, as to the relative merits of anarchism and our present form of government, should come up before the boys, and those who favored anarchism seemed to be winning the discussion, did he, Mr. Mufson, feel it incumbent upon himself to take any sides in the matter. Mr. Mufson stated that he did not. He stated that he believed in free discussion, that any mistakes the boys might make would be corrected by the other boys in the class. The discussion continued, and Dr. Tildsley asked him whether in case an oral composition lesson was had on the merits of Liberty Bonds and a vigorous conduct and prosecution of the war, and the boys who were opposed to the purchase of Liberty Bonds and in favor of an early peace were apparently winning the argument, did he, Mr. Mufson, feel that he should correct or lend his aid to the boys who were being defeated in the discussion; and toward the close of the conversation, Dr. Tildsley said, "You have—"

Q. Wait a minute. When Dr. Tildsley asked

him if he thought he was to offer his weight on one side or the other, what did he say? A. He said, "No." He said he thought his position should be a neutral one, and toward the close of the conversation Dr. Tildsley said that "You have left the impression with me that you do not favor a vigorous prosecution of the war, you do not favor the sale of Liberty Bonds," and Mr. Mufson said that he had no right to draw that inference because he was not acquainted with the facts, and that is about as much as I recollect of the instance.

Mr. McIntyre: That is all.

Mr. Smyth: No questions.

Mr. McIntyre: That is our case.

Mr. Smyth: I move to dismiss the charges on the ground that the evidence brings the case within none of the grounds that are specified by the by-laws or the statute permitting the discharge of a teacher or his being disciplined or punished, and also that the specific charges contained in the written specifications have not been borne out by the evidence.

Mr. McIntyre: With regard to that, the point at issue is whether or not a public school teacher who works for the City of course, and indirectly for the State, who is paid by the City, in instructing the pupils, the future citizens of the State, it is his duty, whether he labors under the active duty of directing their ideas in proper channels, namely, in upholding the form of government, in upholding the United States Constitution, or whether he labors under the active duty of upholding those things, or in consideration of the money he receives for his services he is supposed to sit in the classroom like a "bump on a log" doing nothing, and allowing the ideas of these boys, these pupils, to run in

their own channels, whether they may be erroneous or not.

Chairman Whalen: I do not think there is any need of taking any time on that.

Mr. McIntyre: We simply want our point of view to be made clear to the Committee. In other words, the issue in this case is this: Has the teacher in the classroom not an active duty to perform? Is he there to see that the pupils have right ideas about public questions, about loyalty toward government, and their loyalty to the established order, or when it is apparent to him they are receiving misconceptions, is it his duty to correct the misconceptions or allow them to go uncorrected? Our idea is that it is his duty to correct them.

Chairman Whalen: The motion is denied.

Mr. Smyth: Exception.

THOMAS MUFSON, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. Smyth:

Q. Mr. Mufson, how old are you? A. 33 years.

Q. You were born in Russia, I believe? A. I was.

Q. How old were you when you came to this country? A. I think about five or six years.

Q. You are a citizen of the United States? A. I am.

Q. You became such when you were how old? A. I became a citizen through my father taking out his papers.

Q. Your father became naturalized? A. Yes, sir.

Q. And then you became a citizen? A. Yes.

Q. You are of the Jewish faith, are you not? A. I am.

Q. You are what is familiarly known as an orthodox Jew? A. I am.

Q. You believe in the Mosaic Dietary laws, do you not? A. I do.

Q. Will you please explain what they are with reference to the subject of anarchy? A. You mean what?

Q. Do they countenance or are they opposed to anarchism? A. Anything that upholds government is opposed to anarchism.

Mr. McIntyre: Now, Mr. Chairman, the only issue here is whether he made the statement that these gentlemen have testified he did make. What his religion is or what his actual beliefs may be I think is immaterial. The question is did he say these things on this day.

Chairman Whalen: That is what we think Mr. Smyth.

Mr. Smyth: Of course, but to show the improbability of making the statements certainly must be relevant to show such evidence.

Chairman Whalen: What his religion is has no place here.

Mr. Smyth: Will not your Honor allow me to put in the record whether or not his religion is opposed to the idea of anarchism?

Chairman Whalen: He said that.

Mr. Smyth: He has not been allowed to say it.

Chairman Whalen: Didn't you say just now that your religion was opposed to anything like that? Didn't you answer that question?

The Witness: Well—

Chairman Whalen: Read just what it was.

Mr. Mayer: I think that Mr. Mufson said that anything that upholds our Government is opposed to anarchy, or words to that effect.

Mr. Smyth: All right. I wish to have that brought out. Chairman Whalen asked him that again.

By Mr. Smyth:

Q. You understand what I am asking? A. Yes.

Q. Please answer? A. Of course the Jewish religion upholds government.

Q. And is opposed to anarchy? A. Naturally.

Mr. Smyth: Do not get angry with me. I only want to get the record straight. I now wish to offer in evidence, without having the papers here, the record of this gentleman in the Board of Education. Will the Committee take notice of it anyway?

Chairman Whalen: Very well.

By Mr. Smyth:

Q. Do you remember the interview that you had with Dr. Tildsley on the date that he mentions when Mr. Paul was present? A. I remember the substance of it.

Q. Now, you have heard what Dr. Tildsley says, and Dr. Paul's testimony. Will you please state your version of the conversations? A. I have that interview typewritten.

Q. Did you make a memorandum of the interview? Did you know that it would be made the subject of investigation or did you think of it at the time? A. I had not the least idea why that conversation was held.

Q. When did you make a memorandum of it? A. A few days afterwards.

Q. You heard about it? A. I saw that that was going to be used.

Q. Then did you, from your fresh memory, at that time commit to paper what that interview was? A. Yes.

Q. Can you state it without refreshing your recollection? A. Yes. You mean without reading it?

Q. Yes. A. Oh, yes, I can.

Q. Then state it. A. I want to make a preliminary statement, that the account given by Dr. Tildsley does not accord with the account that I am going to give.

Mr. Mayer: I object to that. That is immaterial. Let him state what the conversation was.

Mr. McIntyre: State what it was.

Mr. Smyth: Go right ahead, Mr. Mufson.

A. (continuing): Dr. Tildsley began by asking questions about the effect of oral English in the classrooms and I told him I thought discussion by the boys was very good, because it gave them an understanding of their own mental powers and of their own mental lack of power. Then he led me on and asked me whether I allowed freedom of discussion in the classroom. I said, Yes, I thought it was good. "If you saw a boy, or if some of your boys," said Dr. Tildsley, "uphold the wrong side of a question would you feel it your duty to impose your views upon the boys in order to correct them?" I said, "No." "Well," said Dr. Tildsley, "what would you do?" "I would give the boys all the facts I could find on both sides of the question." Then asked Dr. Tildsley, "Suppose the boys were discussing anarchism in your room, would you give them both sides of that question or the facts that you found on both sides of that question?" My answer was that I would not permit them to discuss the question of anarchism because their minds are not mature enough. That was all there was to that.

Mr. McIntyre: Was that the whole conversation?

The Witness: No. Dr. Tildsley asked me either, I am not exactly sure, whether I was in favor of the Bolsheviki of Russia, or whether I would permit my boys to speak in favor of the

Bolsheviki of Russia, and as that word was used by the newspapers and by people with all kinds and shades of meanings I asked Dr. Tildsley to tell me how he meant, what he meant by the Bolsheviki, then I would answer that question. I did not get an answer.

Another question Dr. Tildsley asked me was this, if there were a king in a land, in this land, or a land, I am trying to be as exact as I can, and my boys did not have, that is my schoolboys, the boys of my class, did not have the respect for him that was his due by virtue of his office, would I not think it my duty to inculcate respect into those boys even if I had to knock it into them? And I said "No."

He asked me whether I favored the American form of government or the German form of government. I could not see the purpose or the meaning of a question like that. I did not know, I could not fathom his meaning, what was in his mind to ask a question like that. I said of course I favored the American form of government.

Then he went on to say, this is something else that puzzled me. I could not understand. "Suppose a man went from here to Germany, what do you think," meaning me, "would be his attitude toward the German form of government?" I could not tell how I could possibly be expected to know what a man's attitude toward the German government would be. Still I thought that he would not like the German form of government. "Suppose he did," asked Dr. Tildsley "suppose he did like the form of German government?" That was beyond me. He then questioned me "Although you have not told me"—no, he first asked me for my attitude on the war, and added before I could give an answer "You do not have to answer this if you do

not want to." I took him at his word and did not answer him. Then he said "Although you did not give me an answer as to your views on the war I know your attitude on the war, you are opposed to the war I can tell," he said, "from your general behavior here," and I answered him "You have no right to make that inference; first I would talk to you as I would not talk to boys, and your queries are very, very fallacious, and secondly, your inferences may be very, very wrong. In a discussion on freedom of discussion in the classroom, I said, I believed in letting the boys discuss both sides of the question, that I would not impose, that is the word that was used, my views. "Would I let my boys discuss the Liberty Bond question," I said, "Yes," and Dr. Tildsley said "That is enough." However I had time enough to add "I would let them discuss all controversial question." Then said Dr. Tildsley, "You think Liberty Bonds is a controversial question." I said, "Yes," and that ended the interview.

By Mr. Smyth:

Q. That ended the interview? A. That ended the interview.

Q. Now, at the time when he asked whether you would allow the boys to discuss the subject of respect toward the ruler, and would you not correct a boy even to the extent of knocking it into him, and you answered no, what did your "no" refer to? A. Well, first, to knocking it into them.

Q. As a matter of fact corporal punishment is prohibited, is it not? A. I believe so.

Q. You had in mind that whatever assistance you could be in bringing the true facts out on any subject, you would tell the boys the true facts

on either side, if there were true facts on both sides? A. Yes, sir.

Q. Have any of these matters, as a matter of fact come up in the oral arguments in your class?

A. What matters do you refer to?

Q. Anarchy, for instance? A. No.

Q. Conduct of the war?

Mr. McIntyre: There is no claim it was discussed, Mr. Smyth.

A. I want to say, Mr. Smyth, that I have firmly decided to dwell only on the charges and nothing else.

Q. Now, with regard to your attitude on the war, have you written a letter on that subject to the press before these charges were made?

A. Yes, sir, I have.

Q. Have you got that article with you? A. Yes.

Q. When was this written? A. That appeared in the Globe of April 5th.

Q. It is dated March.

Mr. McIntyre: I object to it on the ground that the only point at issue is whether or not he made these statements to Dr. Tildsley.

Mr. Smyth: This goes to the probability of his making them.

Chairman Whalen: Are you sure that was in the Globe?

Mr. Smyth: Yes.

Chairman Whalen: The other was the Mail and World. I am very glad you got the Globe in.

Mr. Smyth: We are trying to get all the patriotic papers. We will get the Times and Sun and Telegram and all the rest of them.

By Mr. Smyth:

Q. Does this article, dated March 29th—or rather was this article that I hold in my hand under

date of March 29th, written by you? A. Yes, sir.

Q. It was written over the name of M. Thomas; was that a nom de plume of yours? A. Yes. The Globe has my name.

Q. The Globe has the original with your name? A. Yes, sir.

Q. And at all times since that time and up to the present time does it represent your views of the war?

Mr. Smyth: I offer it in evidence.

Mr. McIntyre: I object to it on the grounds it is not within the issues, if the committee please.

Chairman Whalen: We will admit it.

"The paper was received in evidence and marked Exhibit A of this date."

Mr. Smyth: This is headed "His Third Prophecy." It reads as follows:

HIS THIRD PHOPHECY.

Editor Globe: When Roumania first joined the allies I sent you the following prophecy: I said Roumania, because of its treachery to the Jews, would suffer the fate of Serbia. I further said that a few more blows delivered by Germany against Russia would send the Russian autocracy staggering to its death. Both of these predictions have been fulfilled.

Now let me once more assume the role of prophet. Revolution is about to strike again and this time it is going to strike in Germany. Reborn and glorious Russia, Republic France, and Liberal England, an invincible triumvirate of freedom, will very soon deliver a death blow to autocratic Germany. The kaiser and his war-hawks are doomed. At the psychological mo-

ment—and that moment is very near, nearer than the world imagines—the German people will rise like a storm and sweep from rejuvenated Europe the kaiser and his band of ruffians, who call themselves the “government” of Germany. No power on earth can keep that cleansing storm from bursting over Germany. A good and far-seeing Providence has staged the fearful, but beneficent events which are now awing Europe. The divine purpose of the European war is clear. Kaiserism is tumbling to the earth to mingle its remains with the cursed debris of Russian czarism. The word of the Lord has gone forth.

M. THOMAS.

New York, March 29.”

Chairman Whalen: March 29th?

Mr. Smyth: Yes, March 29th of this year.

The Witness: Yes, dated, or rather it appeared April 5th.

Chairman Whalen: Is that all Mr. Smyth?

Mr. Smyth: Yes.

Cross examination by Mr. McIntyre:

Q. Why did you write under a nom de plume?

A. I would like to know what that has got to do with the things I am charged with.

Q. You happen to be the witness. You were not ashamed to put those sentiments over your own signature, were you? A. No, of course not.

Q. Why did you write under a nom de plume?

A. I did not care to have my name in the papers as though I was seeking notoriety.

Q. You are quite sure that you were not ashamed to have your name in the papers as favoring the war? A. No, quite sure.

Q. To write a letter to a newspaper predicting the ultimate success of the United States in this war: Do you think there is anything for a man to be ashamed of in having his name connected with it?

Mr. Smyth: He has not admitted any shame.

Q. Do you consider for your name to appear in connection with a forecast as to the success of the United States in this war against the Imperial Government, notoriety—that is, getting one's name in the papers; do you think that there is anything to be ashamed about it?

Mr. Smyth: That is a matter of taste. Some people rush into print; some stay out.

Q. Do you think that there is anything to be ashamed of? A. You may not be ashamed of it. I do not care for it.

Q. You prefer not to have your name mixed up with it? A. Not mixed up; I do not like that expression at all.

Q. Now, you said a few moments ago that you said to Dr. Tildsley that if some of this discussion which might come up in the class-room that you would not interfere; do you remember that; that is to say that you would not throw your weight in favor of one side or the other?

Mr. Smyth: He did not say that; he said that he would get all the facts.

Mr. McIntyre: I know, but he said he would not interfere by suggesting his opinion; was not that it, Mr. Mufson? Never mind that paper now.

A. Will you tell me in what part of the charges that appears? I am sorry—

Q. I am asking questions. I want to find out now just what your outlook on this question is?

A. I have made up my mind not to answer any questions that do not relate to the charges.

Mr. McIntyre: You have not the decision of

that question. Will you instruct the witness to answer?

The Witness: I decline to answer.

Mr. McIntyre: What?

The Witness: I decline to answer.

Chairman Whalen: What is that?

The Witness: I decline to answer.

Chairman Whalen: Unless you can get him to do it, Mr. Smyth?

Mr. Smyth: Let me see.

Mr. McIntyre: Now, Mr.—

Mr. Smyth: Do you not want to be fair, Mr. McIntyre?

Mr. McIntyre: Yes.

Mr. Smyth: You have already stated the conversation on this occasion. It is perfectly proper that they should ask you about that conversation. They are not asking about anything outside of that conversation in that question, so therefore the question is a simple one to answer what you said; that is the question, and that you have already stated on direct.

The Witness: Will you frame your question again?

By Mr. McIntyre:

Q. You said on your direct examination by Mr. Smyth that in certain discussions that might come up in the classroom you would not interfere? A. No, not in those words. I said I would not impose my opinion.

Q. Yes. Now, in what kind of a question would you take that attitude of not imposing your views? A. For example, I am charged here with—

Q. Take the question of anarchism; suppose that came up for debate? A. I would not permit that question.

Q. Suppose that question did come up? A. I would not permit it.

Q. Supposing you were instructed by some one higher in authority to have the question in discussion? A. For example, by whom?

Mr. McIntyre: Will you direct this witness to answer?

Mr. Smyth: Is this fair, Mr. McIntyre?

Mr. McIntyre: I think it is.

Q. Suppose the Superintendent of Schools did instruct you to have your boys debate the relative merits of anarchism or democracy? A. I would like to have the Superintendent of Schools here and ask him if he would instruct me to have that question debated.

Q. In other words, you will not answer the question? A. I have answered the question.

Q. You won't tell this Committee where you stand with regard to that question, will you? A. I have told the Committee.

Q. Well, suppose the question came up in debate? A. I would not permit it to come up.

Q. Suppose the Superintendent of Schools told you that you must allow it to come up for debate?

Mr. Smyth: How can that be the basis of charges?

The Witness. This is childish.

Mr. McIntyre: Will the Chairman instruct the witness to answer?

Chairman Whalen: We will get along very nicely if you will just answer the questions. If you think you cannot answer them, say so.

Mr. McIntyre: He is fencing.

Mr. Smyth: He is not fencing.

Chairman Whalen: He can either say yes or no.

By Mr. McIntyre:

Q. Suppose the Board of Education passed a

resolution directing that that question be debated in your class in the De Witt Clinton High School; would you allow it to be debated? A. My dear, sir—

Q. Would you or, would you not?

Mr. Smyth: He was going to answer; give him a chance.

A. (continuing): That question makes me think of another question. Suppose the moon were made of green cheese: Would I permit the cow to jump over it?

Mr. Mayer: I move to strike the answer out.

Mr. McIntyre: Let it stand. It is a magnificent answer.

By Mr. McIntyre:

Q. Suppose the Board of Education passed a resolution directing you to allow the question of anarchism to be discussed; would you allow it to be discussed? A. I decline to answer.

Q. Did you not say on your direct examination that you are not bound to teach boys respect for the President of the United States? A. I did not.

Q. Perhaps I misunderstood you. What did you say with reference to that? A. I said nothing at all; that question was not brought up to me at the interview.

Q. Do you believe that you do labor under an obligation to inculcate respect for the President of the United States in the minds of your pupils? A. I decline to answer the question.

Q. Are you in sympathy with the United States in this war against the German Government? A. I decline to answer the question.

Mr. Smyth: On what ground? You are getting yourself in a position you do not appreciate.

Mr. McIntyre: One moment—

Mr. Smyth: Wait a moment. I think the wit-

ness is so entirely strange to the witness chair that he does not appreciate where he is placing himself.

The Witness: I appreciate fully just what I am saying. I am not irresponsible. I know what I am saying.

Mr. Smyth: The question is do you feel it your duty to inculcate respect for the President of the United States?

The Witness: I decline to answer that question.

Mr. Smyth: Because it is not in the charges?

The Witness: Because it is not in the charges.

Mr. Smyth: All right, let us see; let us waive that for the moment, because after all they are entitled to know that.

The Witness: I do not think so.

Mr. Smyth: Yes, oh, yes, I think you had better answer that. It is a very simple question.

The Witness: I decline to answer.

Mr. Smyth: Well—

By Mr. McIntyre:

Q. Do you believe it is your duty to urge the pupils in your class to give active support to the United States in this war against the German Government? A. Will you show that I have not done so in the classroom?

Q. Will you answer my question or not? A. No, I will not.

Q. That is sufficient? Do you remember when the loyalty pledge, which was circulated among the schools on behalf of the Board of Education, was presented to you? A. May I ask you what that has to do with these charges?

Chairman Whalen: I think you might answer.

Mr. Somers: I think, inasmuch as the gentleman declines to answer the questions further, that you should not press the questions.

Mr. McIntyre: In other words, you do not want me to press the questions?

Mr. Somers: I do not think so; I think it is wasting time.

Chairman Whalen: Any more witnesses? Have you any further witnesses?

Mr. Smyth: No. I renew the motions to dismiss the charges upon all the evidence, and upon all the grounds urged heretofore.

Will it be considered that the by-laws, Section 39, Subdivision 18, and Section 41, Subdivision 18, are in evidence?

Mr. McIntyre: I object to the reception of those by-laws in evidence because they are offered for the purpose of showing that the grounds upon which teachers may be tried are general inefficiency, neglect of duty and insubordination and gross misconduct.

Chairman Whalen: We will take it under advisement.

Mr. Smyth: You made them a part of the other case?

Chairman Whalen: Yes.

Mr. Smyth: They were received.

Chairman Whalen: No. We will take them under advisement.

Mr. Smyth: Then we had better mark them for identification.

Mr. McIntyre: When the Committee decides to receive them you can instruct the stenographer to copy them into the record. If they are not received he can mark them for identification.

Chairman Whalen: We will receive them for identification.

Mr. Smyth: All right. Your Honor denies me that motion?

Chairman Whalen: Yes.

Mr. Smyth: Exception. Your Honor denies the motion to dismiss?

Chairman Whalen: Yes.

Mr. Smyth: Exception.

Chairman Whalen: Now, do you want to discuss before the Committee the evidence, or do you want to sum up for us?

Mr. Smyth: I would not attempt to sum up at this late hour, with the continuous session we have had ever since three o'clock this afternoon. I do not think I could do the Committee any good, or myself, or any one else any good. It seems to me we ought to do it some other time or else waive summing up.

Mr. Mayer: I am perfectly willing to waive it.

Mr. McIntyre: I will waive it.

Chairman Whalen: Then you will submit it as it is to us?

Mr. Smyth: Submit it as it is. I rely on my motion to dismiss, which I now renew on all the evidence. It comes within none of the subdivisions or classifications of the by-laws which I have referred to, and that the matters testified to or the matters contained in the charges are not the subjects of charges for the purpose of dismissal or discipline of the teachers, and further that the charges as specified have not been borne out by the evidence. I suppose the by-laws are in evidence?

Chairman Whalen: The reason I referred to it now, was that in the beginning of the trial I said that at the close of the trial if you chose to give us your view on the law of the case we would be glad to hear you. It is only for that reason that I call it to your attention. I know you must be tired after such a long trial. The by-laws have been submitted to the Committee for identification, and if we admit them we will let you know, and if we overrule your offer we will give you an exception.

Mr. Winthrop: Is it your idea that the new Educational Law takes the place of the by-laws or the by-laws are still in force?

Mr. Smyth: As I understand it the new Educational Law takes effect to the extent of providing for the by-laws to be amended, and until the by-laws are amended those by-laws are still in force.

Mr. Winthrop: Your point is that these by-laws are still in force in spite of the new Educational Law?

Mr. Smyth: That is true.

Mr. Winthrop: That is your point?

Mr. Smyth: Yes.

Mr. Somers: In regard to that, the law is very explicit. I cannot put my hand on the section, but it provides that a teacher may be removed after a hearing for cause.

Mr. Winthrop: The point that Mr. Smyth makes is that the by-laws specify the grounds upon which you can remove a teacher.

Mr. McIntyre: We must have a by-law which is not inconsistent with the statute. Furthermore, let us assume that the by-laws is in effect, and all these things come under the head of gross misconduct, refusing to serve the United States in this great crisis, the greatest crisis in the history of the world.

Mr. Smyth: May I say one word in that respect: There is not any evidence from the prosecution of any act on the part of any of these teachers; there has been nothing but an attempt to get up a hypothetical case and ask their opinion on a hypothesis. There has been no evidence of any kind that in the discharge of their duties any one of these teachers were other than loyal, honest, faithful servants to this community. It is something comparable to the old Salem witch-

craft trials, that a person who is supposed to have views that were not in cognizance with the views of the community, are put on trial and asked suppositious questions, not as to what they have done, not as to what their duty requires them to do, but taking a case that is not in point at all, what would you then do; in other words, you could not get a better example of trying to set a trap and catch these persons, get these persons into making admissions outside of anything they have done, than we have had here exhibited before us in the testimony of Dr. Tildsley and Mr. Paul, and the other gentlemen who have testified. So far as the character of these men is concerned, everybody seems to unite that they bear unblemished reputations as teachers and as gentlemen. They have done nothing. We may disagree with some of their views, so far as statements of philosophy are concerned, but there is nothing to show that they are unfit from this evidence, and certainly what they have said is absolutely incognizant with our ideas of loyalty and patriotism. If these persons had gone on the stand and admitted that their idea was that patriotism should not be taught in the schools, that they were against you, if they were told to, that would be one thing. But you have had them before you. You have heard them cross examined at great length, and they have told you that so far as their conduct towards their scholars was concerned, if the subjects were to come up they would be loyal. Merely because, in an inquisition carried on by Dr. Tildsley, under circumstances which it seems to me certainly smack of prejudice, and are founded on something else other than specific disloyalty, they have managed to extract here and there, phrases and statements, apparently through faulty recollection, evidence of which Dr. Tildsley gave us on the

stand, of distorted meaning, it is hardly a fair thing to say that these gentlemen are to be deprived of their liberty and are to go forth stigmatized in this world at this critical time as disloyal subjects, the worst punishment that can be meted out. If these men were on trial before a jury in an ordinary court of record, there is not any judge, and I know Mr. Whalen will agree with me, who would permit that kind of testimony to be received to blacken the reputations of these men.

If, for instance, Mr. Schmalhausen, in class, had received this paper written by Hyman Herman and had said, "Well, boys, you have heard this statement, I do not disagree with it," and that utterance of his had gone forward to the others, then you would have something to fasten on; then you would have just grounds for saying that "that man is unfit to be a teacher because he has given us evidence of it," but nothing of that kind occurred. We find that he did not even know about the statement that Herman had made until some two weeks afterwards, when he was shown the statement, not in the school-room, not in the presence of boys who were to be taught, but in the inquisitorial chamber. Questioned, and made to say things, according to the interpretation of Dr. Tildsley, which are at variance with the statement that he has annotated on the paper itself. The whole thing is hypothetical. There is not anything real in any of these charges. To say a teacher is to be dismissed on a hypothesis of that kind, it seems to me, is to give countenance to something un-American, unpatriotic and opposed to all our institutions and our ideas of what a trial should be, which only seeks to deal out fairness and not deal out trickery, and to entrap a man.

Mr. McIntyre: May it please the Committee

with regard to that: Some of these cases do present issues of fact. Now, the only way that you can decide these issues of fact in favor of these teachers is by assuming that Dr. Tildsley, Mr. Anthony and Mr. Paul have entered into the dirtiest kind of a conspiracy against these people without any reason, without any motive that I can conceive. I cannot conceive how you can come to any conclusion other than the fact that Mr. Tildsley and Mr. Anthony and Mr. Paul are telling the truth. You have heard them and you have heard the witnesses, and we are going to let you decide the issues of fact. But remember this: You cannot decide against Dr. Tildsley and the others without coming to the conclusion that they hatched a conspiracy against these men. I cannot conceive why they should have done that. Therefore, I feel that you must decide the issues of fact against these defendants.

Now, having decided the issues of fact against them, it will become apparent that, although they were presented in many instances with hypothetical questions, hypothetical situations, it was only through these hypothetical questions that their attitude toward the United States in the present conflict with the German Government could be ascertained. It could not be done any other way. As far as I am aware, the course of study did not permit it. There was not anything tangible that afforded the educational officers the means or the opportunity of finding out just where these people stood. The only way it could be found out was by presenting these hypothetical situations and ascertaining from their attitude from the way they would act in these given situations, whether or not they were friendly or unfriendly to the United States Government in this, the greatest of all crises.

Now, having ascertained from these answers

that they were hostile to the Government, it was a plain violation of the duty which they owed to the State, because, in point of fact, they do receive their livelihood from the State, and in these insidious ways seeking to undermine the Constitution of the State, and the Constitution of the State requires every public official to take an oath that he will support the State Constitution and the Federal Constitution, therefore, if these three gentlemen made these statements which showed they were not in sympathy with the United States Government in this war against Germany, that they were, we might say, disloyal, I think some of the testimony goes that far, they plainly disqualified themselves longer to continue as public school teachers because a public school teacher owes an affirmative and positive duty to work for the State; not an attitude of even passivity, but labors under the obligation of taking affirmative steps to protect the interests of the State and Federal Government. You cannot get away from that. The legal proposition is as plain as can be.

Chairman Whalen: We want to thank you gentlemen very much, indeed, for the very courteous way in which you have tried these cases. I feel very grateful to the corporation counsel also, and your viewpoints which you have just given us are going to help our Committee in the determination of this case.

We understand now that the cases have been submitted to us, we will take them under advisement and render a decision as soon as possible.

Hearing in the Above Case Closed.

DEPARTMENT OF EDUCATION OF THE CITY
OF NEW YORK.

In the Matter
of
The Charges of Conduct Unbecoming a Teacher, Preferred by Associate Superintendent TILDSLEY,

against

A. HENRY SCHNEER, teacher in the DeWitt Clinton High School.

New York City, December 3, 1917.

Met pursuant to adjournment at 3 o'clock P. M., this case being taken up at 10 o'clock P. M.

BEFORE THE COMMITTEE ON HIGH SCHOOLS
AND TRAINING SCHOOLS.

Present—Mr. WHALEN, Chairman.

Mr. ATKINSON,

Mr. GIDDINGS,

Mr. GREENE,

Miss LEVENTRITT,

Mr. SOMERS,

Mr. WINTHROP.

APPEARANCES:

CHARLES MCINTYRE, Esq., and WM. E. C. MAYER, Esq., Assistant Corporation Counsel, for the Board of Education.

HERBERT C. SMYTH, Esq., and R. WELLMAN, Esq., appearing for A. Henry Schneer.

President W. G. WILLCOX and Secretary A. E. PALMER, of the Board of Education.

Chairman Whalen: The Committee is now ready to hear the case of the teacher, Professor Schmeer.

Mr. Smyth: At the outset, if it please the Committee I deem it my duty to present a matter which is exceedingly disagreeable to me, in the first place, because of the nature of the protest that I am about to make, and, in the second place, because I have a very long acquaintance with the Chairman, about whom, under all other circumstances in the last twenty-five years that I have had the pleasure of his acquaintance, I could not think of raising such a question, but the public print and the evidence which is at our disposal leaves no other course open to me. I think I should very much like to leave the matter to the discretion of Mr. Whalen himself, but in view of the public statements made by the Chairman, and particularly in an edition of the Evening Telegram of November 25th last, and in other publications, published throughout the City, it has been borne in upon me as representing these three teachers, that Mr. Whalen has rendered himself unfit to preside as a member of this Committee, because apparently he comes in as a judge with a prejudice against them, which to my mind makes it impossible to insure, so far as the Chairman is concerned, these gentlemen will have a fair and unprejudiced hearing.

There is much evidence at my command, and which I assume will come out during the course of the hearing, that the genesis of these charges was in a resolution which was passed by the Teachers' Council, which condemned or criticised the Chairman's action in utterances which he had made with reference to the prolongation of hours of work of the teachers and school hours of the pupils, a subject which is utterly foreign to the charges as will be easily seen by reading

the charges themselves. It appears that in getting at who should be made defendants or respondents in this proceeding that in the course of the investigation the principal inquiry made of the witnesses, including the accused teachers, was not with reference to the particular charges, but the first and important question asked was "Did you vote or have any part in giving light to the so-called Whalen resolution?" the resolution which I have referred to which criticised the Honorable Chairman.

Now, under these circumstances I respectfully lodge a protest, and I say respectfully, because I have the greatest amount of respect for Mr. Whalen as a lawyer, as an officer, and as a citizen, but at the same time were I in his place I would deem myself equally unfit to act in the dual role of accuser and judge. It is a position which is absolutely opposed to all our democratic institutions. It was one that was guarded against at the time that this Republic was born, in fact, and it seems to me, that as I feel it must be the desire of all the members of the Committee, including the Chairman himself, that they shall have judges who are just as impartial, sitting here with regard to the gentlemen, as would be the case if they were to be tried in a court of record down in the court house where Mr. Whalen has often graced the bar at that tribunal, and under these circumstances I now make a formal protest against Mr. Whalen acting as Chairman.

Mr. Mayer: If the Committee please, the protest which my learned adversary has so suavely lodged does not seem to me to be at all in point. He speaks of your Chairman as the accuser. Of course, the Committee knows that neither the Chairman nor any other member of this Committee preferred these charges. They come from

an entirely different source. He is the judge, it is true. We have understood for some time that some such claim as is now made was going to be made against the honorable Chairman of this Committee. We do not believe that it is pertinent. We do not believe that the law as it is generally understood will view with displeasure the sitting of Mr. Whalen as a member of this Committee. Here he is acting as a public official. He is sworn to do his duty. The law demands that he will do his duty to the fullest extent, and with justice and without malice toward the accused. It lies wholly within Mr. Whalen's conscience whether or not he sits in this Committee. He cannot be ousted from this Committee by a protest of this kind, which is far afield from the matters which will come up for judgment here. I therefore urge that Mr. Whalen, in accordance with dictates of his own conscience, remain and sit as a member of and Chairman of this Committee.

Chairman Whalen: I appreciate very much Mr. Smyth's position and recognize that it was his duty, of course, to make the objection; I know there is nothing personal about it at all.

Mr. Smyth: Not at all.

Chairman Whalen: Not at all. I submitted the matter to my Committee and they cannot see any reason in the world why I should not sit. I never expressed an opinion in the cases now before us and I am not aware that I have ever mentioned the names of the defendants. I gave a correct description of the kind of teacher that I thought ought not to be in the school, and, of course, if you admitted that that description fitted your clients, then I would have to admit that I have expressed an opinion which might be taken as being opposed to them. If they do not fit the description, then, of course, no harm

has been done to your clients, because their names were never mentioned.

However, your objection is overruled and you may have an exception.

Mr. Smyth: That our position may be correctly understood, Mr. Chairman, the views expressed by you in the abstract have my hearty concurrence. It is because of information that has come to us that you have attempted to apply those views to the three teachers, or we fear that this testimony points in that direction, that I filed a protest. If the description were to fit my clients I would not be here defending them.

Chairman Whalen: Therefore it is quite clear that whatever I may have said does not apply to your clients, in view of the statements you have just made.

Now, number 2 and number 3 of your affirmative defense are overruled, and you may have an exception to those, so that narrows the issue right down to the specific charges that have been made by the City Superintendent against your clients.

I sincerely hope, and the Committee hope, that you gentlemen, Mr. Smyth and the other counsel, will try this case without any feeling at all, try it in an orderly and dignified way as you always try your cases in court, and where you can stipulate in regard to testimony so as to shorten it, we will be glad if you will do so.

Mr. Smyth: I will do everything I can.

Chairman Whalen: At the close of this and the other trials, if you feel you would like to argue the legal application as to the question of fact brought out in the trial we will be very glad to hear you.

Mr. McIntyre: We will now take up the Schmeer case.

Chairman Whalen: Yes.

Mr. McIntyre: These are the by-laws of the Board of Education showing the jurisdiction of this Committee. I offer them in evidence.

Chairman Whalen: I ask you if your clients have any objection to the reporters being present in the room? They have asked permission to be here.

Mr. Smyth: We have not. We leave that to your Honor entirely.

Chairman Whalen: May I ask, Mr. Smyth, if you will agree that the pupils from the school who have been detained here may be excused from the room during the trial?

Mr. Smyth: If your Honor thinks that is the better course.

Chairman Whalen: All the pupils subpoenaed here will please leave the room, and the officer will take care of them in the meanwhile until they are called as witnesses.

(The pupils left the room.)

In order to shorten this trial we think maybe you can agree with the Corporation Counsel that the question here to determine is, not what took place before or after, but just what took place on this day, that it will help. Mr. Smyth, is there a date specified? I do not know what the date is.

Mr. Mayer: We will bring the date out in the testimony.

Mr. McIntyre: I offer in evidence certified copy of Section 13, Subdivision 7, of the By-Laws of the Board of Education.

The paper was received in evidence and marked Exhibit No. 1 of this date.

Mr. McIntyre: I offer in evidence certified copy of Section 21, Subdivisions 4 and 5, of the By-Laws of the Board of Education.

The paper was received in evidence and marked Exhibit No. 2 of this date.

Mr. Smyth: As I understood the Chairman to say, he asked me to stipulate what we were to try is whether the charges that are made happened on the day intended or mentioned.

Chairman Whalen: No, I mean these interviews were said to have taken place.

Mr. Smyth: May that be specified?

Chairman Whalen: He says he is going to do it.

Mr. McIntyre: I offer in evidence the charges and specifications in the case of A. Henry Schmeer, served personally on Mr. Schmeer on the 19th day of November, 1917.

Mr. Smyth: Your point is that you wish us to admit service?

Mr. McIntyre: There is no question about due and timely service.

Mr. Smyth: Not at all.

The paper was received in evidence and marked Exhibit No. 3 of this date.

Mr. McIntyre: On behalf of the defendant, do you wish the answer in the record?

Mr. Smyth: Yes.

The paper was received in evidence and marked Exhibit No. 4 of this date.

Mr. Smyth: I understand that numbers 2 and 3 of our affirmative defense are overruled.

Chairman Whalen: Yes. You may have an exception.

Mr. Smyth: I take an exception.

JOHN J. TILDSLEY, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. McIntyre:

Q. Dr. Tildsley, you are Associate Superintendent of Schools? A. I am.

Q. Do you know the defendant in this case, Mr. A. Henry Schmeer? A. I do.

Q. He is a teacher in the De Witt Clinton High School? A. He is.

Q. He is a teacher of what subject? A. Mathematics.

Q. Have you ever had a conversation with Mr. Schneer? A. I have had many; a number of conversations.

Q. Have you ever had a conversation regarding the specifications in this case? A. I have.

Q. When was that conversation held? A. The conversation on which the specifications are based was held, I believe, on the 7th of November, the day after Election Day.

Q. When, or rather where, was it held? A. It was held in the principal's office at the De Witt Clinton High School.

Q. Who was present? A. Mr. Anthony, Dr. Paul, Mr. Schneer and myself.

Q. Did the conversation transpire between you and Mr. Schneer, or did all parties participate in it? A. Mr. Schneer and I did most of the talking; Mr. Paul did some and Mr. Anthony, I think, also did some.

Q. Will you tell us the substance of that conversation with reference to the teaching of patriotism in the schools? A. We had an interview a few days before on the question of methods of teaching in the school, and Mr. Schneer had given us his views in regard to the prevailing methods, to the teaching of science and mathematics, and it was stated that physics, chemistry and mathematics were but forms of symbolic logic, and he talked at great length along that line, and we listened to him, and that closed the interview for that day, and the next time I saw him I told him I was very much interested in his views of science and upon the question of whether he believed in evolution, and he said he did, and therefore I brought up

the question of whether the institutions of the present time were not a result of evolution from previous conditions, and he said decidedly that they were, and I said, "Since you believe so firmly in the evolutionary doctrines, do not you think that has important lessons for us in the teaching of patriotism and the preparation of boys in the high school for citizenship?"

That brought out the question whether patriotism could be inculcated in the school, and in the course of this discussion he made the statement, which I dictated immediately at the close of the discussion to a stenographer, that he did not believe in the discussion of patriotism in schools.

Now, we discussed that quite at length and in the course of this discussion about patriotism the question came up of various means of developing a patriotic attitude on the part of the pupils, and as part of that discussion came up the question of whether any respect was due to the uniform or to a person wearing the uniform.

Q. What kind of a uniform? A. The khaki uniform of the United States troops. He then made the statement that he would not allow a person in a khaki uniform to appear on the platform of the De Witt Clinton High School and speak to the students, on the ground that it would encourage militarism and encourage a one-sided presentation of the attitude towards the war. I then raised the question of whether he would allow Arthur Haase to speak from the platform.

Q. Who is Arthur Haase? A. Arthur Haase was a teacher of mathematics for many years in the De Witt Clinton High School, was the leader of the Junior organization of the boys, and exceedingly popular among the boys, and he went to Plattsburg and received a commission as

a lieutenant in the Quartermaster's Division. I asked him whether he would allow Arthur Haase to speak. I said, "You realize that in war time he would have to wear his uniform." He said, "I would not allow him to speak unless he would take off his uniform; he would have to come in civilian's clothes." Then he further said he would not allow him to speak unless Walter Lippman should be asked at the same time to speak on the platform and speak on the non-military duties that a citizen could discharge for the government. We proceeded from that to the general question of further preparation of the boys for military service, and I put this question to him: "Some people believe that the war may last for five years longer; if it does last for five years longer the boys now of the High School will be available for military service. Now," I said, "it is a mooted question whether military drill in the schools for boys tends to result in a good army, and assuming that the best expert authorities agree that if we had military training in the high schools for the next five years, at the end of that time we should have a better military force for the service of the government than we could have without this, would you favor military training?" And he said, "I do not believe the Board of Education has any right to have military training in the schools."

The question came up of other services that might be rendered by the schools, such as co-operating in the sale of Liberty Bonds, and he said that the President of the United States did not dare to ask the teachers in this city to sell Liberty Bonds. I drew the general inference—

Mr. Smyth: I object to the statement of "general inference."

Chairman Whalen: Yes, leave out the inference.

By Mr. McIntyre:

Q. Is that the substance?

Mr. Mayer: Did you tell him that you drew that general inference?

The Witness: No, I did not tell him I drew the general inference; the impression left upon my mind, this is a fair statement, I believe—

Mr. Smyth: I object to the impression. He can only state what he remembers he said.

The Witness: This is what I remember.

Chairman Whalen: Leave out the word "impression."

By Mr. McIntyre:

Q. State what the substance of any further conversation was?

Mr. Smyth: What did he say and what did you say?

The Witness: What I said?

Mr. Smyth: Yes.

The Witness: I did not tell you what he said and I can answer any question you see fit to ask as to what I said.

By Mr. McIntyre:

Q. Now, Dr. Tildsley, did you have any conversation with regard to this bibliography which I now show you? A. So far as I remember, I did not have any conversation in that interview about that bibliography.

Q. Did you at any time? A. Not that I remember; I made no memorandum about it.

Mr. McIntyre: Is it conceded, Mr. Smyth, that Mr. Schmeer is the author of this bibliography?

Mr. Smyth: Yes, he wrote that.

Mr. McIntyre: It is conceded that Mr. Schmeer

placed this on sale in the school to be sold to the pupils?

Mr. Smyth: No, not to be sold to the pupils.

Mr. McIntyre: I am trying to save time.

Mr. Smyth: Mr. Schneer may state.

Mr. McIntyre: What did you do with this?

Mr. Schneer: The G. O. store is under the faculty supervision, and they passed on it and inserted the ad. in the Magpie and admitted it in this G. O. store.

Mr. McIntyre: You say you did not put it in the G. O. store?

Mr. Schneer: No, sir. I might say I caused it to be put, to be accurate.

Mr. McIntyre: You caused it to be circulated among the pupils, did you not?

Mr. Schneer: No. There is a G. O. store in which we have things on sale. This is one of the publications on sale there of many.

Mr. Smyth: What do you mean by causing it to be published, in the way you describe?

Mr. Schneer: Yes.

Mr. Smyth: Caused it to be placed on sale in the way he has already described.

Mr. McIntyre: On sale to whom?

Mr. Schneer: To anybody of the teachers and pupils who wished to buy it.

Mr. McIntyre: With that statement I offer this in evidence.

The paper was received in evidence and marked Exhibit No. 5 of this date.

Mr. McIntyre: In regard to this I would like to call the Committee's attention to certain characterizations of the works that are referred to in this bibliography. For instance, on page six there is a work by D. H. Lawrence, which is characterized as "The Tremulous Poesy of Passion."

On page seven there is a work written by

somebody else which they characterize "The Hidden Springs of Sex and Desire." Then further on, on that same page, there appears "The Clouded Crystals of Love."

On the next page, "Violets of Tenderness." And "Arias of a Vibrant Soul."

Then "The Cold Grays of the Lovelight." "Heart Throbs of the Midnight Hour." Then on the next page "The Wilder Fires of Sex." Further on "Shadowed Strains of Love."

Then we have on the next page "Clicking Castanets of Passion." Again, "Fragrant Kisses of Youth."

I presume you will look at the rest. Those I call to your attention.

Chairman Whalen: Have you finished your direct examination?

Mr. McIntyre: Yes, that is all.

Cross examination by Mr. Smyth:

Q. Was this the first or second interview you had with Schneer? A. The third.

Q. The third? A. Yes, sir.

Q. What was the first interview you had? A. The first interview was an interview in the evening school office, I believe on the 31st of October, the first day I was over there, when I asked him about the resolutions being passed by the meeting of the Teachers' Council, because Mr. Pickelsky had told me that Mr. Schneer handed him the resolutions.

Q. Now, there was a stenographic report taken of the first interview, was there not? A. Yes, sir.

Q. And you gave part of that stenographic report to Mr. Schneer, did you not? A. He received all that I received.

Q. And so far as anything that he was given was concerned, it referred to questions designed

to get him to admit that he either drew up the resolutions, presented them or handed the resolutions to the Chairman, the resolution known as "The Whalen Resolution"? A. No, sir, it does not; it does not refer only to that.

Q. Is this the extract? A. Yes, sir.

Mr. Smyth: I offer it in evidence.

The paper was received in evidence and marked Exhibit A of this date.

Mr. Smyth: I will not take up the time now to read all these questions and answers, but the Committee can see by going over it, if they will, that these are all questions and answers relating to the subject of the Teachers' Council in which he is very closely cross examined, and that seems to be the whole thing on Dr. Tildsley's mind at that time.

By Mr. Smyth:

Q. How did you happen to have that interview in regard to the Teachers' Council taken down stenographically? A. That particular interview?

Q. Yes. A. We expected to use the stenographer on those interviews.

Q. Why? What was the object? A. But the defendant refused to answer any questions so I gave it up.

Q. Was that the reason you got a stenographer in? A. No, sir.

Q. The question I have asked is why did you get a stenographer in? A. Because I wished to get down the questions and answers.

Q. On this question of whether he was responsible for the resolutions of the Teachers' Council? A. Not merely that, but as to the resolutions themselves, because the resolutions themselves contained some very important views as

to the functions of teachers of classes and their relations to Boards of Education.

Q. Was it not to get a record of the person who was responsible for drawing up the resolutions? A. No, sir, because I did not know that Mr. Schneer had drawn up the resolutions.

Q. Is not the first question you asked him, according to the extract, that? A. I did, but I did not know that he did.

Q. Had you not been informed that he had? A. No, sir.

Q. It was an inspiration on your part to ask him that first? A. Not at all. I had been told by Mr. Pickelsky, Chairman of the Committee, that Mr. Schneer had handed him the resolutions. I simply asked him a formal question whether he drew up the resolutions.

Q. When you had been told by the Chairman then you went prepared with a stenographer to ask him on that point, did you not? A. Not to ask him on that point; to elicit the truth on that point.

Q. To make a record against him, did you not? A. To make a record of the interview.

Q. It was not until the third interview that you thought of going through an academic discussion as to what he would do under given circumstances in relation to the pupils? A. Yes, I thought of it before that.

Q. Did you really think of it previous to or before you had fastened responsibility for the resolutions on Mr. Schneer? A. I never fastened responsibility for the resolutions on Mr. Schneer.

Q. Did not you state that you did? A. No, sir, I did not.

Q. You tried to, did you not? A. I tried to find out whether Mr. Schneer had drawn up the resolutions. Mr. Schmalhausen has already testified that he drew them up.

Q. Or that he handed, or rather, Mr. Schneer handed them to the Chairman and was sponsor for them in that way; you wanted to fasten on him that liability for that act, did you not? A. No, sir, because Mr. McKelsey had already testified that he had handed the resolutions to him before.

Q. Was not your object in getting a stenographer so that you would have a record of it that he was the one who handed them to the Chairman, and after you got that then you went ahead trying to trap him by asking academic questions? A. No, sir.

Q. That is all that you did on the third interview, wasn't it, to put supposititious questions to him, was it not? A. No, sir, it was not.

Q. For instance, the question of militarism had not come up in the class-room one way or another, had it? A. That question constantly comes up in the De Witt Clinton High School whenever you have groups of boys together, gathered together, and he has charge of a section.

Q. It had not come up with Mr. Schneer? A. I could not say so.

Q. He is professor of mathematics? A. He is also section officer of the school, having charge of a group of somewhere between thirty and forty boys, whom he meets every day, and for whom he takes the place of the principal, and to whom boys go for advice and help concerning questions.

Q. Had the question of his giving advice on military subjects come up? A. I know nothing of that.

Q. Then it is true that your fastening on these charges was the result of your finding out that Mr. Schneer was the one who handled the resolution, known as the "Whalen Resolution"? A. No, sir; it is absolutely untrue.

Q. It has no relation, has it, one way or the

other? A. It has no relation with the matter of the resolution known as the "Whalen Resolution."

Q. You think there is nothing peculiar in the fact that you selected the mathematics teacher with whom to take up this matter of patriotism after you had had two previous interviews on the unrelated subject of the Whalen Resolution? A. It is not peculiar; no.

Q. No, I do not think it is. A. The fact is we know that school throughout. I know probably three-fourths of the teachers in that school exceedingly well.

Q. Did you have any stenographer with you when you had your conversation with Mr. Pickelsky? A. I had not.

Q. Why not? A. I did not have the stenographer with Mr. Pickelsky because Mr. Pickelsky was selected, or summoned because he was Chairman of the Committee and it occurred to me, I think Mr. Paul possibly said it to me, that we must get a stenographer in.

Q. For Mr. Pickelsky? A. Not for Mr. Pickelsky; no, when Mr. Schneer came.

Q. Why did you not have a stenographer for Pickelsky? A. It did not occur to me to have a stenographer for Pickelsky.

Q. The reason is that you could not fasten anything on Pickelsky, was it not? A. I was not attempting to fasten anything on Pickelsky. Mr. Pickelsky was the Chairman of the Committee and in trying to find out why the teachers passed these resolutions I naturally called in the Chairman of the Committee, the presiding officer on the occasion. There was no intention or any effort to get anything on him at all.

Q. When you found out the person who had handed the resolution in you bethought yourself of the stenographer, and then you bethought

yourself of putting the academic questions to him, to trap him? A. No, sir, not at all.

Q. You do not think so? A. No, sir, I do not.

Q. Now, do you remember when you asked Mr. Schneer whether he would teach patriotism in the schools, his asking you before he answered that, to first define what you meant by patriotism?

A. I believe he did, yes, sir.

Q. And did not he say at that time that the reason he asked was that he might avoid the usual synonyms of patriotism and militarism? A. He probably did, something of that kind.

Q. Then didn't you say that patriotism means self-sacrifice and service to the state? A. I think I said that patriotism was made up of a love of country and a willingness to make sacrifices for their country even to the extent of giving up your life for it.

Q. Then did not Mr. Schneer reply, quoting exactly, "I agree with you"? A. I do not remember that he did.

Q. Didn't he say that in substance? A. I do not remember that he did.

Q. Do you deny that he did? A. I do not deny; we had a very long conversation; I cannot remember everything that was said.

Q. He said nothing unpatriotic in that interview did he? A. Yes, sir, he did.

Q. What was it he said unpatriotic? A. He said the most unpatriotic utterance that I have ever heard a teacher give forth.

Q. What was it he said unpatriotic? A. He said the most unpatriotic utterance that I ever heard a teacher give forth and that was that he would not allow a man in khaki uniform to appear on the platform of the school and speak to the students. I cannot conceive of anything much more unpatriotic than that.

Q. Is that the only thing you have in mind

which he said that was not patriotic? A. It was unpatriotic for him to say that he would not allow patriotism to be discussed in a high school.

Q. Did he not, after you had defined patriotism, did he not say, "Yes, I agree with you"? and was not that in response to the original question "Would not you teach patriotism?" A. No, sir, it was not; on this statement—

Q. You made that answer? A. You said he agreed with me after the definition of patriotism which is an entirely different thing from the question of whether he would teach patriotism in the school.

Q. Didn't he agree with your definition of patriotism? A. I think he accepted my definition of patriotism; yes, sir.

Q. When you had defined what you meant by patriotism, didn't he then say that that was a perfectly legitimate subject to teach in the schools? A. No, sir, he did not.

Q. Will you deny that he admitted that patriotism, such as was defined, was a perfectly proper subject for teaching? A. I will deny that he made any statement to that effect; yes, sir, in the public high school, namely, the DeWitt Clinton High School.

Q. Do you remember when you asked him whether he believed in introducing military training in the schools and he said that he did not, did not you then say, "I agree with you; but suppose the Board of Education should introduce military training what would your attitude be?"; did not you make that answer? A. No, sir.

Q. Did not you say that unless the Board of Education did introduce military training that you agreed with him that in the school where the boys were not older than sixteen that military training should not be introduced in the school?

A. The question was not raised for boys under sixteen, whether the Board of Education introduced it or not.

Q. Did not you make such a statement as I have outlined; do you want it read again? A. I made a statement that I believed the best authorities were agreed that military training for young boys was not a desirable thing; that is, for the purpose of producing soldiers.

Q. So that you did agree with him in that respect? A. No, sir, I did not agree with him.

Q. You said you did not think that a desirable thing to do, to have military training for boys? A. It is too indefinite, and I will make my own statement, if I may. I made the statement that the best expert authorities at the present time agreed that military training for boys under sixteen years of age was not a good thing.

Q. Is not that what he agreed to? A. He undoubtedly agreed to that statement.

Q. Was not that where you both agreed on the same subject as to military instructions? A. To that extent he agreed with my statement, undoubtedly, but that is not the point at issue.

Q. Speaking of the uniform, did not you and Mr. Schneer have rather a technical discussion as to whether the real point at issue was that the uniform without any soldier in it meant nothing, but it was when the soldier was in the uniform, when the soldier had the uniform on that he should be respected? A. We had no technical discussion on that question.

Q. Did you have a discussion on that subject as I have put it? A. Not as you have put it. We had a discussion on the question of whether when a boy saw a man in khaki uniform during war time whether he ought not to have an instinctive reverence for that person in that khaki uniform.

Q. Yes, and did not he say to you it is the man in the uniform that counts primarily, and did not you say that is true? A. No, sir, I did not.

Q. "I know of many who are wearing the uniform against their will." Didn't you say that? A. No, sir. If any one said that it was he. I said when a boy saw a man in a khaki uniform he ought not to think of the question of whether the man was drafted or whether he was a volunteer, but he ought to think of what that man was going to undertake in the trenches, possibility of loss of life, and not the question of whether that man was drafted or volunteered.

Q. Do you remember as to whether you and he disagreed as to just what had been said, and this occurred: You said to Mr. Schneer, "You said, you did not care to see the uniform displayed on the platform in assembly," and he answered, "I did not say that," and you said, "What did you say?" and he answered, "I said we should, in all fairness to the boys, invite both the uniformed and the un-uniformed, a man like Walter Lipman, one of the advisers of President Wilson, by the way, who is just as valuable to our boys even though he does not wear the uniform, and furthermore, Dr. Tildsley, I have seen the astounding phenomena enacted here," referring to somebody in uniform being an irresponsible character. Do you remember that answer? A. I remember part of that answer. He certainly did allude to Walter Lipman and say that non-military services were as valuable as military services, and on that we did not agree.

Q. Didn't he say, in fairness to the boys, that those who did not have a uniform as well as those who did have a uniform should be entitled to speak? A. Yes.

Q. He did? A. Yes.

Q. So that the objection that he made was that

a uniformed man should be allowed to occupy the platform to the exclusion of the un-uniformed, was it not? A. That question was not raised, as to the exclusion.

Q. You have admitted it? A. Oh, no, I have not.

Q. You have admitted, have you not, that he did say that the un-uniformed as well as the uniformed person should be allowed to speak from the platform? A. Will you state that again, please.

Q. (Question read.) A. No, I did not say that.

Q. Did not you just admit that a little while ago? A. No, I never made any admission that a uniformed person should be allowed to speak on the platform at all.

Q. Didn't you admit that just a little while ago? A. No, I did not.

Q. Just go back and let us see? A. He never made an admission that a uniformed person should be allowed to speak on the platform at all. He said a uniform should not be allowed—

Mr. Smyth: Just a minute. Go back and read the record.

Record read.

The Witness: Yes, that is a different question the way it is put the second time.

Q. With regard to Arthur Haase, was not the objection he made to him that he was not a good speaker? A. It was not.

Q. Did not he say something of that kind? A. Not that I remember.

Q. Will you deny that he did? A. I will not deny it because the conversation was too long to remember every single thing.

Q. Will you deny that his sole objection, so far as it was expressed to Arthur Haase was because he was not a good speaker and nothing

else? A. I will deny that his sole objection to Arthur Haase was that Arthur Haase was a poor speaker. That did not enter into the question at all.

Q. Arthur Haase, in your opinion, is not a very good speaker, is he? A. He is a fair speaker, he is not a good speaker. But he is a fair speaker.

Q. He is not a speaker whom you would select to talk from the platform to high school boys, is he? A. I would, when he had a uniform on.

Q. You mean that that gives him a greater power of oratory? A. Yes; the uniform does half the speaking for him.

Q. No matter what the subject is? A. Yes, sir, at this time.

FRANCIS H. J. PAUL, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. McIntyre:

Q. You are the Principal of the De Witt Clinton High School? A. Yes, sir.

Q. Do you know Mr. Schneer, the gentleman on trial here? A. Yes, sir.

Q. He is a teacher of mathematics in that school? A. Yes, sir.

Q. Were you present at a conversation between Mr. Schneer and Mr. Tildsley, yourself and Mr. Anthony? A. Yes, sir.

Q. When was the conversation held? A. November 7th.

Q. Mr. Anthony is the Vice-Principal of the school? A. He is.

Q. Where was the conversation held? A. In the office of the school.

Q. Do you remember the substance of that conversation? A. Yes, sir.

Q. Did Mr. Schneer state anything with refer-

ence to the teaching of patriotism in the schools, and if so what, and to whom? A. He said to Dr. Tildsley that he would not permit patriotism to be discussed in the schools.

Q. Did he say anything about the propriety of allowing persons wearing the uniform of a soldier to address the children, and if so, what was it, and to whom did he say it? A. In speaking to Dr. Tildsley he said, at first, that he would not permit, if he had the power, anyone in khaki to use the platform of a school or to speak from the platform of a school. Later on he modified that to the effect that if anyone did speak in khaki, even if it were Arthur Haase, he said of all those that could speak in khaki Arthur Haase would be the most acceptable to him, he said if he did permit anyone he would demand or require that the person speaking in khaki should be followed by some other person who would balance any military effect that Mr. Haase might have.

Q. What did he say with reference to giving the students of the public schools military training? A. He answered a question propounded by Dr. Tildsley, as I recollect it, Dr. Tildsley said, "If the present war were to last in the neighborhood of five years, and if the Board of Education had consulted expert authority and had agreed that military training should be introduced into the schools would the Board of Education be right in introducing military training?"

Q. What did he say? A. No.

Cross examination by Mr. Smyth:

Q. Then he simply expressed the opinion that it would be perhaps a bad policy for the Board of Education to adopt military instruction for boys of the age of boys who go to De Witt Clin-

ton High School, is not that so? A. No, there was no determination of age of boys or limitation to the age of boys who go to De Witt Clinton. As a matter of fact—

Q. You have answered that question. A. Dr. Paul, he did not say that he would not follow any order the Board of Education. He did not use those words.

Q. He did not use those words nor the substance, did he? A. To my mind that is the substance of them.

Q. What did he say; did he state he would defy the Board of Education? A. He did not say he would defy it, but he did say he did not think it would be right for the Board of Education to take those steps.

Q. To your mind is that tantamount to saying that he would defy the Board of Education? A. No, sir.

Q. Was there anything in his saying that was inconsistent with his obedience to the Board of Education if it did adopt that scheme? A. He would not have met the question of obedience or disobedience until the Board had acted.

Q. Precisely, he said nothing that showed he would not obey, did he? A. He was not questioned on that.

Q. Did he say anything so that he would not have? A. He could not have done so.

Q. Did he say anything that showed that he would not have? A. No, sir.

Q. Thank you. Then it was all a question of a policy which even had not reached a nebulous form, was it not? A. It was a question of a policy which had not yet come before the Board of Education.

Q. And so far as anything to the contrary was concerned he was perfectly right, because at that time the Board of Education had not as yet

adopted military instruction; is not that so? A. Exactly.

Q. Now, in speaking with regard to what he said in regard to the uniform, persons in uniform, speaking from the platform, after consideration, he did say, did he not, that he would allow persons in khaki uniform to speak from the platform? A. He did not say so directly that he would allow persons.

Q. Did he say it indirectly? A. I would not consider that he said it indirectly.

Q. Did you not say that he said that Arthur Haase would be the one that he would have less objection to than anyone else? A. He said if it had to be done by anyone, Arthur Haase would be the most acceptable to him.

Q. And that is all he said on that subject? A. That is all I recollect, except he said that—implied that even Arthur Haase would have to be balanced by a pacifist.

Q. Did he say pacifist? A. I do not recollect the exact word.

Q. Then why did you use that ugly word if he did not say it? A. With no intent.

Q. Are you sure about that? A. Absolutely.

Q. Then will you withdraw it? A. Willingly.

Q. Thank you. A. But may I substitute the name I know he did use?

Q. What? A. The name you asked me a moment ago.

Q. Lipman? A. Beg pardon; Walter Lipman. yes.

Q. Is that the name that you meant? A. That is the name that I meant.

Q. Did you know that he was one of the advisers of President Wilson? A. I did not.

Q. Do you consider any person who speaks from the stage, not in uniform, as a pacifist? A. No, sir.

Q. That was a slip on your part, not intending to injure Mr. Schneer? A. Not intending in any way to injure Mr. Schneer.

Q. Did you receive a letter from Mr. Schneer dated June 22nd, 1917, of which this is a copy?

A. Yes, sir.

Mr. Smyth: I offer it in evidence; or if you have the original I will use that.

Mr. McIntyre: I object to the letter because I cannot see that it has any bearing whatsoever on this case. I object to it for that reason. I do not see what real bearing it has.

Mr. Smyth: I will offer the original. It relates to the booklet that has been offered in evidence.

Chairman Whalen: All right.

The paper was received in evidence and marked Exhibit B of this date.

Mr. Smyth: This letter reads:

“June 22nd, 1917.

Dr. F. H. J. Paul,

Principal, De Witt Clinton High School,
City.

Dear Sir:

In behalf of the boys of Clinton and the welfare of the school in general, I beg leave to remind you of your promise of this morning to investigate the following:

1. My sudden transition from Grade Adviser of the Fifth Form—after I had successfully executed the duties of Adviser of all the successive previous forms (for four terms prior to the curren semester).

2. The hasty removal of my booklet (“A Brief Guide to Contemporary Literature”) from the G. O. Store at the request of “a teacher who objected to some books recom-

mended 'therein'”—said booklet having evoked the personal approval of such esteemed American Literary Critics as Richard Le Galliene, Bliss Perry, Wm. Lyon Phelps and others.

Sincerely yours,

A. HENRY SCHNEER.”

By Mr. Smyth:

Q. Did you say anything about that matter, Dr. Paul? A. About his request?

Q. Yes. A. Yes, I spoke to the gentleman about that letter.

Q. You spoke to him? A. Mr. Schneer.

Q. Did you investigate as he asked you to? A. And to find out why the book had been removed?

Q. No, did you investigate anything about it; did you investigate the subject? A. The substance of the books?

Q. Anything, I am asking. A. Why, the books were removed at the request of the head of the English department in the school on the grounds they were improper books.

Q. I did not ask you that. I asked you whether you investigated anything. A. I had investigated before that communication had come to me.

Q. As a matter of fact— A. (interrupting): The communication is a request for information.

Q. When did you first see that booklet? A. That booklet was put before me first, by Miss Garrigues.

Q. And you knew, did you not, that not more than about five copies of it had been purchased by anybody and they were teachers? A. No, I did not know anything about the sale of the book until it was put before me.

Q. As a matter of fact, you were presented with a copy yourself? A. I was.

Q. By Mr. Schneer? A. I was.

Q. When it first came out? A. I do not know when it was, or near the date of publication or not.

Q. How long did you have it before you received his letter of June 22nd? A. I presume I had it several months.

Q. Did you think anything about it? A. I did not look it over very closely. I do not know whether I examined it carefully at all, up to that time.

Q. It was sent with his compliments, was it not? A. Yes, I had a great many other things on my mind besides that.

Q. Some books of the same character as those contained in Mr. Schneer's Bibliography are contained in this book called the "Red Book", known as the De Witt Clinton High School 1917-18 Red Book, which was gotten up under the auspices of yourself and others in authority; is not that so? A. Yes, I am responsible for the contents of the whole, not in detail.

Q. Some of the same character of books are in this Red Book, are they not? A. It may be that some books will be found in both.

Q. Of the same character, Yeats and Shaw; is not that so? A. I say that it may be that you will find the same books, or a number of the same books listed in both books. I have not compared the list.

Q. This is a list that you recommended to Miss Garrigues? A. That is a list Miss Garrigues prepared.

Mr. Mayer: They do not contain the same comments, do they?

The Witness: They do not contain the same comments, and they do not contain all the books.

Mr. Smyth: They do not contain the same subtitles?

The Witness: They do not contain all the same sub-titles and they do not contain all the books mentioned in the other pamphlet.

Mr. Smyth: That is all.

OSCAR W. ANTHONY, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. McIntyre:

Q. Mr. Anthony, you are the vice-principal of the De Witt Clinton High School? A. I am.

Q. And you know Mr. Schneer, the man on charges here? A. I do.

Q. And you have heard the testimony of Dr. Paul and Dr. Tildsley, have you not? A. I have.

Q. You were present at the conversations that have been talked about? A. I was present at two of the interviews, not the first.

Q. Do you remember anything that transpired on either of those interviews that you were present at? A. I remember quite a good many things in connection with those two interviews.

Q. Did you hear Mr. Schneer say anything about persons wearing the uniform of a soldier of the United States? A. I did.

Q. What was said? A. I heard Mr. Schneer say first that he would not allow a person wearing the uniform, if he had jurisdiction in the matter, he would not allow a person wearing the uniform of a United States soldier, khaki uniform I think he said, to enter the building. I heard Mr. Schneer say that he would not allow a person wearing the khaki uniform to appear on the platform, and to address the boys, and I heard him further modify that statement to the effect that if by chance, I do not know that he used the words "by chance," but if a person—

Q. Go ahead. A. That if a person wearing the khaki uniform was allowed to speak that he

would insist that a person who would present the opposite side be allowed to speak at the same time.

Q. Was anything more definite than "the opposite side" said? A. He mentioned the name of Harry Lipman.

Q. Is there anything else? A. I do not think of anything else.

Cross examination by Mr. Smyth:

Q. You were sitting quite some distance away, were you not when this interview took place? A. No, I was sitting directly across Dr. Tildsley's desk.

Q. Is it not a fact that you moved over to that position some time after the interview had started? A. No, I think not; not to the best of my recollection; I moved back and forth between the two positions, one at my own desk and one opposite Dr. Tildsley's desk.

Q. How did you happen to be present at this interview? A. I was at my own—at the interview with Mr. Schneer—I was at my own position at the desk, the one I usually occupy; I was present at one of the previous interviews at Dr. Tildsley's request, but Dr. Tildsley did not ask me to be present at the interview with Mr. Schneer.

Q. Which interview were you present at at Dr. Tildsley's request? A. At the one with Mr. Schmalhausen.

Q. I mean with regard to Mr. Schneer? A. At no interview with Mr. Schneer was I present at Dr. Tildsley's request.

Q. In what room did this interview take place?
A. In the principal's office.

Mr. Smyth: That is all.

Mr. McIntyre: We rest.

Mr. Smyth: We make the same motions to

dismiss as before: We move to dismiss upon the ground that the evidence does not support the charge as specified, and there is no evidence of the violations of the matters that are touched on in Subdivision 18 of Sections 39 and 41 of the by-laws that has been proven.

Chairman Whalen: Your motion is denied.

Mr. Smyth: Exception.

Chairman Whalen: Tell us a little more what he meant by "The opposite side." He did not make that quite clear to me, what is meant by "Opposite side."

Mr. McIntyre: The witness testified that the defendant said he would not allow anyone wearing a khaki uniform to come into the building, and then he went on to amplify afterward that if a person wearing the uniform of a soldier were permitted to address the students that somebody ought to be there to address them on the opposite side, and I asked him if he could be a little more specific about the opposite side and he said somebody like Walter Lipman.

Chairman Whalen: Did he mean if a man came there in uniform that he would want one there in civilian dress, or did he mean if a man was to discuss the cause of the war that he would want to have somebody on the other side?

Mr. Smyth: That would not be a fair comment from any testimony that has been given here, Mr. Chairman.

Chairman Whalen: Ask the witness that.

Mr. Mayer: Mr. Anthony.

Mr. Smyth: Let him come back here if he says anything of that kind.

By Mr. Mayer:

Q. What did you mean that Mr. Schneer said when he stated that if a man in the khaki uniform of a soldier of the United States spoke

from the platform of the De Witt Clinton High School then a civilian or some other person presenting the opposite side should speak?

Mr. Smyth: Let him come around so we can see him.

Chairman Whalen: Come around there.

Mr. Smyth: And face a regular cross examination.

By Mr. McIntyre:

Q. Now, Mr. Anthony, you have said that Mr. Schmeer said that if anybody wearing the soldier's uniform addressed a student body that somebody ought to be there to present the other side; did you say that? A. I did.

Q. I asked you what you meant by the other side, and your answer does not seem to have been satisfactory. Will you please explain?

Mr. Smyth: What was the conversation?

Mr. McIntyre: What he said, referring to the other side.

A. Mr. Schmeer spoke of the one in khaki representing the militaristic side.

Q. What did he say? Cannot you tell us what was said to him and what he said to Dr. Tildsley?

Mr. Mayer: Just give the conversation as you remember it?

The Witness: I have given it in substance just the way I remember it.

Q. The actual words if you can? A. I remember that the word "militaristic" was used.

Mr. McIntyre: That is not sufficient; what did Dr. Tildsley say to him or what did he say to Dr. Tildsley, either verbatim or in substance?

The Witness: I have answered the question I think in reference to what the answer was.

Mr. McIntyre: What is the answer? Repeat it.

The Witness: Mr. Schmeer said that he would

not allow a person in khaki uniform to appear on the platform unless someone—to present the militaristic view, at least he put that in to the best of my belief, the word militaristic was used by Mr. Schneer, there or a little bit later, I cannot say, he would not allow the militaristic view to be presented by a person in khaki unless the other side was also presented.

Mr. McIntyre: What other side; what do you mean by that?

Mr. Smyth: No. Not what he means; what was said.

Mr. McIntyre: What was said?

The Witness: As I recall—

Mr. McIntyre: Wait a minute. You have said “the other side.” Now, then, whatever you have in mind with reference to the other side, will you state the conversation that took place with regard to what you have in mind?

Mr. Smyth: He may not have said anything more than “the other side.”

The Witness: I do not think he said anything more than “the other side” according to my recollection.

Mr. McIntyre: Is there anything else now?

The Witness: I do not think of anything else.

Mr. McIntyre: Did Mr. Schneer make use of the words “non-militaristic”?

The Witness: Not to my recollection.

Chairman Whalen: Is that your case?

Mr. McIntyre: Just a minute, Mr. Chairman, please. That is all.

Mr. Smyth: We move to dismiss upon the grounds that the evidence does not support the charges as specified, and that no evidence of any violations of the matters that are touched on in Subdivision 18 of Sections 39 and 41 of the By-laws has been proven, and I assume that your Honor will take that under advisement.

Chairman Whalen: Yes, except we deny your motion.

Mr. Smyth: Exception.

A. HENRY SCHNEER, called as a witness in his own behalf, being duly sworn, testified as follows:

Direct examination by Mr. Smyth:

Q. Mr. Schneer, how old are you? A. I am 28 years old.

Q. You are an American citizen? A. Yes, sir.

Q. How long have you been teaching in the public schools? A. This is my ninth year.

Q. And in what capacity have you been teaching? A. Mathematics.

Q. From the time that you first started until you were suspended? A. Yes, sir.

Mr. Smyth: At this point I will offer in evidence his record from the Board of Education.

Chairman Whalen: Yes.

By Mr. Smyth:

Q. Do you recollect the first interview that you had with Dr. Tildsley? A. Yes, sir, very strongly.

Q. Will you please state what your recollection is, what he said and what you said? A. The interview took place on Wednesday, October the 31st, I was the fourth, or the third rather, of the Teachers' Council to be called, the fourth on that day, and as I entered I saw a stenographer. The interview divided itself into two parts, the first part with reference to the Whalen resolutions exclusively, and the second part with reference to my booklet.

Mr. Mayer: Cannot the witness give the interviews without giving his characterizations of them. It seems to me that is only wasting time.

Chairman Whalen: It will be well to do it.

By Mr. Smyth:

Q. Just state your recollection of the substance of what he said and what you said. A. In the first interview Dr. Tildsley asked me three questions in rapid succession: "Did you vote for the Whalen resolutions?" "Did you write the Whalen resolutions?" "Did you hand the resolutions to the Chairman?" I answered, "I should like to be excused from answering all these three questions on the grounds that the resolutions were drawn up at the suggestions of the Teachers' Council before 105 members of the faculty of De Witt Clinton High School, and it was unfair to ask each member of the Teachers' Council separately and individually, and that, while I did not fear any incrimination with regard to the Whalen resolution, I thought it was unjust to my colleagues and to the general *esprit de corps* of the entire faculty to reveal any portion—

Mr. Mayer: Is this what you said?

The Witness: That is in the stenographic report.

Mr. Mayer: Is this what you said on that occasion?

The Witness: Yes, sir.

Q. Go on. What else was said? A. Then Mr. Tildsley said that he had a suspicion that I was disloyal, and I immediately rose and asked permission to leave the interview on the grounds that my loyalty had been put in question, and after I had given repeated evidence of my loyalty, and after I had signed the constitutional oath, as I was about to leave, Dr. Tildsley called me back and said, "I did not mean that you are not loyal to the Government, disloyal to the Government, you are disloyal to the educational system," and I objected to the use of the expression on the grounds that I felt that in my long career, no

record of mine, no act of mine, no thought of mine could have been misinterpreted as being disloyal to the authorities, and I thereupon was asked with regard to loyalty again, and then I asked for permission to leave the interview on the same basis, that my loyalty was being questioned for no reason whatsoever, and Dr. Tildsley said, "I am not questioning your loyalty to the Government or to the educational system, but to the principal," thus using the word loyalty in three different aspects. I said, "What do you mean by that?" Then he distinctly said, I remember it distinctly, and this is what he replied, and it is in the stenographic report: "Any member of the DeWitt Clinton High School who has approved the Whalen resolution is disloyal to the educational authorities." I made the statement that "logically 102 out of 105 who were present are disloyal to the authorities, and I see no reason why I should be singled out, nor Mr. Schmalhausen, nor the Teachers' Council as responsible for the Whalen resolutions voted for by 102." That ended the question of disloyalty. Then Dr. Tildsley read from a letter I had written with regard to the booklet, and I made it distinct, that Dr. Paul had seen the booklet three months before the booklet was put on sale, the booklet was put on sale at the suggestion of one of the teachers, one of the English teachers, and he said it might be good for the boys, and I tried to put ten or so on sale. As a result of this, nine were bought by the teachers and one by a boy. I asked what objection there could be to the book, so that in my revised edition, I might omit some sub-titles if there was objection; the sub-titles read, were those regarding Theodore Dreiser's, "The Genius". Then I started to leave and Dr. Tildsley said to me in a friendly way, "Why are you leaving?" And I said that it is

not scientific to discuss a book on the basis of a sub-title, and, furthermore, that it was quite a coincidence that Dr. Paul himself had previously objected to this booklet, that is, in the week of June 23rd, on the basis of the same sub-title, and I smiled again, and Dr. Tildsley asked me friendly, in a friendly way, why I was smiling. I answered, "Well, it is so unscientific to discuss a book on the basis of sub-titles," and I added that I should be glad to discuss this booklet for the purpose of revision, if necessary, if we discussed the book, "The Genius", or any other book objected to. There was no reply, and I went on and I asked—I was merely interested in this book, as a modest work of art, and I said that I had comments by the literary critics, the letters of which I had in my possession then, that I never gave the pedagogic aspect of it any thought, and that I should be glad to go over these books for the purpose of considering the pedagogic aspect of the booklet. That ended the interview. As I was about to go out, I made some remark like this: "Dr. Tildsley, you have been very frank with me, I would like to be frank with you, if you do not object. I cannot understand why you are carrying on these undemocratic proceedings, and I am especially surprised at you, and I am speaking frankly, Dr. Tildsley, a man toward whom all young teachers look up and forward to, for the purpose of increasing the democratic ideals, taking any part in any such undemocratic, un-American and un-Tildsleyian procedures." There was a smile at the unusual use of the word un-Tildsleyian, and with that, we parted. The interview was carried on, the first part, with a very antagonistic spirit, and the second part with a very friendly spirit.

That completed the first interview on Wednesday, October 31st. The reason I remember these

things distinctly, is first, because we had an experience meeting shortly after the interviews on the Friday and Monday following, at which I was one of the speakers, and after I had been—

Mr. Mayer: Experience meeting of whom?

The Witness: Of the teachers of the De Witt Clinton High School, at which most of us who had been interviewed, the persons who had been suspended, especially, and transferred, spoke with regard to our experiences. I do not know that that has any relevancy. That is the first interview. I have answered that question, Mr. Smyth.

By Mr. Smyth:

Q. What favorable criticisms had you received with reference to this contemporary literature?

Mr. Mayer: I object to that as irrelevant and immaterial. I think it is for the Committee to pass on this booklet, and the sub-titles, and not the opinion of outsiders. This is not a question of what somebody outside thinks of this book. It is what influence this book had on the student's mind.

Mr. Smyth: There is no charge about the sub-titles anyway.

Mr. Mayer: The charge is against the whole book.

Mr. McIntyre: He characterized them.

The Witness: I will omit talking about the letters and just mention the fact that the librarian of the De Witt Clinton High School, when presented with a copy of said booklet, asked me to place it on sale.

Mr. McIntyre: We object to that for the reason that the opinion of the librarian is not material. It is the opinion of this Committee of the Board of Education.

Chairman Whalen: Yes. The book is in evidence and they can read it.

By Mr. Smyth:

Q. These are all standard works, are they not?
A. Yes, sir, found in every library.

Q. Found in every library? A. Yes, the statement No. 3, within the introduction, makes it quite clear with reference to the books in the Public Library.

Q. Coming to the next interview that you had with Dr. Tildsley, when was that? A. Thursday, November the 1st. I was given to understand that this was nothing but a friendly interview, my educational opinion upon certain matters, and the following questions were asked that have pertinence to the charges: "Dr. Tildsley, would you teach patriotism in the schools?"

Q. Go on and state what occurred. A. "Define patriotism." The reason I ask, is in order to answer your question, also.

Mr. McIntyre: What are you reading from?

By Mr. Smyth:

Q. What notes are you reading from? Can you state it without refreshing your recollection?

A. Yes.

Q. State it without refreshing your recollection. A. The question of patriotism—

Q. Go ahead. A. The first question—there were questions in regard to symbolic logic, and questions of mathematics and so on, and then, "Would you teach patriotism in the schools?" And I said, "In order to answer your question will you kindly define patriotism, as most people use synonyms of patriotism and militarism?"
By Dr Tildsley: "Patriotism to me, means self sacrifice and service to the State." I said, "I

thoroughly agree with you." That is all with regard to patriotism.

Q. Did you say you would not teach such patriotism as he defined? A. Never. I agreed with his definition.

Q. That it was a fit subject to be taught? A. I teach it every minute of the day.

Q. How do you mean you teach it every minute of the day? A. I should qualify that statement. I never teach patriotism in mathematics, except in the indirect way, for example, self government in the classroom, by which I mean good citizenship, etc., but with regard to myself as a section officer I must say that I have had very little opportunity, not that I do not want to, because prior to that I have always had section officer work leading toward good citizenship and patriotic duties; this term I had no such opportunity; I should say had very little opportunity, because my section was put in the lunch room along with six or seven other sections. The lunch room—well, I had no opportunity to get at the bottom of a boy as I have had for the past eight years, by which I mean heart to heart talks, current events, discussions of contemporary science, biographies, American scientists, etc. In other words, when I use the expression "I teach patriotism every day, every minute, wherever I have an opportunity to make the boys feel that they should participate in the activities of the school, for example, for the past eight years but one, because this term I have no section office, except in the lunch room, I have had what is called the first term section. This is very pertinent. The first term section was given to those teachers who are exceptionally capable in handling first term boys. In fact it is widely known that anyone, any teacher who has the first term section, is thereby re-

nowned as a section officer, and in those eight years in training in citizenship, in training in democracy, in training in patriotism, I succeeded in the following results, general organization and—

Mr. Mayer: What are you reading from?

The Witness: I am reading from a letter with regard to my record.

By Mr. Smyth:

Q. Can you state it? A. I can state it without that. There are so many facts here—

Q. If it is necessary to refresh your recollection by that article you may do so. A. The general organization is a democratic organization of which, or rather in which all the boys of the school participate under a faculty adviser, and the purpose of this general organization is to develop self-reliance on the part of the boy, to develop a civic service on his part and thus train in self-government and good citizenship. Out of a class of thirty-five, for six years I carried the banners of 100% general organization membership. In one instance I was given what is called a defective class, a defective class is defined as one containing boys who are left back. I was given this class at my own suggestion, because I felt that with the proper kind of manipulation these boys could be trained in good citizenship. At the end of the term I succeeded in getting 100% membership in the G. O. This was said by Mr. Albert Lowenthon, the Chief Adviser of the First Term sections, as being a remarkable feat. I do not know what relevancy this bears.

Q. Then getting on, you did teach good citizenship then for eight years that you had an opportunity to? A. Yes. And indirectly in the mathematics class not directly.

Q. Were you ever criticized for anything that you actually did in the classroom or in connection with your scholars? A. Criticised in what sense? Against?

Q. Against? A. No, sir, always highly praised, as the records will show.

Q. To go on with the Tildsley conversation. Have you given all the Tildsley conversation?

A. With regard to patriotism; yes, sir.

Q. Did you say that you would not permit patriotism to be taught? A. Never.

Q. Do you hold any such view as that? A. Never. I never entertained even a faint suspicion of such a view, nor do I now.

Q. Are your views on the contrary that patriotism should be taught? A. Absolutely. I believe in democracy, in education, especially.

Q. Then was the subject of the khaki uniform brought up by Dr. Tildsley? A. Yes, sir.

Q. Just state what was said and by whom? A. I was asked "Do you revere the uniform as such?" I said, "In order to understand you, Dr. Tildsley, will you kindly define 'as such,' because, as a teacher of mathematics, and a teacher of logic, I cannot understand form without content." Dr. Tildsley did not define "As such." Therefore, I could not answer his question. With regard to Arthur Haase—

Q. What else did you say with regard to the uniform when it was on the person or on the soldier, as to whether it should be shown respect or disrespect? Were you asked anything with regard to that? A. Not directly; indirectly I was asked with regard to the speakers on the platform.

Q. What was said about that? A. Speakers on the platform. The discussion came up and I said that I thought it very unfortunate for the principal not to allow teachers to suggest speak-

ers on the platform, and mentioned the instance where in one case where Miss Kate Wiggin was not permitted to speak because of the fact that a Y. M. C. A. speaker had occupied all the time. I thought that was very unfortunate because the principal's duties had become so onerous that such assemblies should be conducted in part by the teachers.

Chairman Whalen: Mr. Smyth, won't you see if you cannot get him to talk about the question of khaki?

Mr. Smyth: Yes, sir, come to the question.

The Witness: Then I was asked whether I would permit anyone to speak on the platform.

By Mr. Smyth:

Q. Whether you would permit a uniformed man to speak on the platform? A. I said yes I would invite both a uniformed and non-uniformed. Then I was asked what non-uniformed man would you invite, and I said a man like Walter Lipman. I was asked why—no, I was not asked why. I continued, Walter Lipman, a gentleman of conscript age, was made special adviser on military service and non-military service in time of war, and I thought just like Miss Kate Douglas Wiggin, Mr. Lipman has a very special message for our boys. I mention this because I had had a very opportune opportunity to invite Walter Lipman, because I had been connected in a small way with the "New Republic."

Q. What was that? A. That was a magazine of which Walter Lipman was former editor. He left as editor to take up the work at Washington. Then I was asked about Arthur Haase, and would I invite him. I said, "Absolutely, no." "Why?" "Because he cannot speak," and I had in mind then the previously vain attempt that Arthur

Haase had made to speak in all his fifteen or twenty years' teaching. I had no objection to him personally. He was a member of the mathematics faculty, but as a speaker I thought he was incompetent, and, therefore, would have somebody else speak on his topic.

Q. Did you say to Dr. Tildsley that you would not permit a person in uniform to ascend the platform to address a body? A. Never.

Q. Do you hold any such views? A. Never.

Q. Have you any such views? A. No, sir.

Q. Have you ever had any such views? A. No, sir.

Q. Did the subject of military instruction in the schools come up? A. Yes. Thereupon the subject of military instruction in the school came up in the following manner: Dr. Tildsley asked whether I would introduce military training in the schools. I said, "Emphatically, no." Then Dr. Paul asked me why not, and I said, "In the first place, it is a very hypothetical question, and I do not object to answering it, but he should remember as part of the logic that the conclusion to a hypothetical question is limited by that hypothesis." Then I went on to say that military training should not be introduced because it instills the young, untutored, unreasoning mind with habits of blind mechanism, and that my philosophy of life, as far as science was concerned, allowed of mechanistic interpretation, and so far as society is concerned I would always believe in creative evolution.

Q. Did you make any statement in regard to when military instruction should commence and under what circumstances? A. No, I never made such a statement except in that answer to Dr. Paul about the young, untutored mind.

Q. Did you say— A. Yes, the question of the Slater bill came up with regard to boys who

were taking military training. I made the point that I was not aware that military training was in the schools, that the boys drilled in armories were boys over sixteen, and in that way the age was introduced.

Q. What did you say as to whether you approved of military instruction in the proper environment or proper age? A. I never made a statement to that effect.

Q. About that subject, on that subject? A. Yes. The statement I made, so far as I recall it, is this, that young boys, especially boys of an early age, at De Witt Clinton especially, should not be introduced to military training, boys under sixteen.

Q. Boys under sixteen. Did you make that point that your comment was confined to boys under sixteen? A. I cannot say that, no.

Q. What was it that you said then? A. That military training should not be introduced in the high schools.

Q. Did you mention the age? A. Only in an indirect way, never directly.

Q. I am trying to get at what was it that you did say about the age? A. About the age? You mean the age in years or the category like "young"?

Q. The age in years. A. I mentioned the age sixteen only in regard to what is now known as the Slater bill.

Q. Up to that time do you know whether military instruction was authorized in the public schools? A. Never until I saw this bill, which I read.

Q. Where is that bill, by the way? A. I have an excerpt here, Section 713, Military drill excluded.

Mr. McIntyre: Are you reading from the Educational Law now?

The Witness: Yes.

Mr. McIntyre: You can take judicial notice of that, Mr. Smyth, in order that we can have it, you might read it.

The Witness: Military drill excluded. It is just a small sentence: "Nothing herein contained indirectly shall be construed to authorize military instruction or drill in the public schools during school hours."

By Mr. Smyth:

Q. Did you have that bill? A. I did not mention that bill; no.

Q. You did not wait for the question. Did you have that in mind when you were having that discussion with Dr. Tildsley? A. No. What I had in mind was an article by Findlay, that I had read in regard to military training, in which he makes it to be distinctly understood that he objected to making the school boys take the military attitude, especially the gun side of it? at so early an age. I had that in mind. I had also in mind, I did not say this, but the reports of the National Educational Society as against the introduction of military straining.

Mr. Mayer: I move to strike that all out. It was not in the conversation.

By Mr. Smyth:

Q. It was not in the conversation? A. No, sir.

Q. Have you said all the conversation that took place on these subjects? A. With regard to military training and patriotism? Yes, sir.

Q. Did the subject of selling Liberty Bonds come up? A. Yes, sir.

Q. What was said in that respect? A. Dr. Tildsley asked me what was my attitude about the Liberty Bonds when they were put on sale;

that is the bond. I said distinctly that when Dr. Tildsley spoke in assembly I handed out not only one blank to each boy in my portion of the assembly, which was required, but I handed two, which was not required.

Q. Did you, therefore, try to stimulate the sale of Liberty Bonds? A. In that way; yes, sir.

Q. Is it true that you said you were against the selling of Liberty Bonds or anything of that kind? A. Never. In fact, I said I was never opposed to selling a Liberty Bond, but I had distributed two blanks. And then Dr. Tildsley said, "If you were a teacher of English, would you allow a discussion on Liberty Bonds?" Dr. Paul intervened, saying, "You know you at one time taught English at the High School of Commerce, therefore, the question is asked." I saw the meaning and I answered, "I certainly would allow the boys to speak on the other side, meaning the opposing side of Liberty Bonds, if I were a teacher of English, and I was asked on what grounds, and I said, because the scientific attitude to my mind means judgment, not prejudgment. I made it distinct that the selling of Liberty Bonds is not a controversial matter, and then Dr. Tildsley said, "Of course, the Government must raise money in time of war," and, therefore, he thought that there might be another angle, "such as taxing excess profits." That was his statement. I said that is exactly the attitude the "New Republic," had taken toward Liberty Bonds; and I was asked, If I would allow boys to sell Liberty Bonds in the school. I said, "Decidedly," but that I objected to taking the poor student out of the classroom, poor in the sense of knowledge of the subject, and submitting him during the school hours to the sale of Liberty Bonds, on the ground that a parent had come to me and

complained of the probable deficiency on the part of the boy at the end of the term.

Q. Because his time was being used up? A. Yes, sir, I mentioned the boy's exact name. That is all about the Liberty Bonds.

Chairman Whalen: Did he buy any himself?

Mr. Smyth: I do not really know, but there is no such charge made as that.

Chairman Whalen: I thought maybe you might ask him for information.

By Mr. Smyth:

Q. Have you at any time made a statement to Dr. Tildsley or anyone else which was in any sense or degree opposed to the policy of this Government as to the military instruction, as to reverence for the khaki uniform worn by soldiers, as to any methods taken by the Government to raise funds? A. Emphatically no to all three questions.

Mr. Smyth: That is all.

Cross examination by Mr. Mayer:

Q. As I understand your evidence, you want the Committee to understand that you are an unqualifiedly loyal and patriotic American citizen? A. Yes.

Q. And you say that without any mental reservation whatsoever? A. Absolutely no mental reservation.

Q. Then why did you refuse to sign the loyalty pledge which the Board of Education sent around? A. I never.

Mr. Smyth: That is a very unfair question because it assumes that he did refuse. First prove that, if you can.

By Mr. Mayer:

Q. Why did you protest against signing it? Didn't you sign that protest? A. I will read it

first and see whether I signed it. Yes, sir, I signed this protest, and it is not a loyalty pledge. It is a protest to a loyalty pledge.

Q. A protest against signing a loyalty pledge?

A. Beg pardon?

Mr. Smyth: Mark it in evidence and let us all see it.

Mr. Mayer: I offer this paper in evidence.

The paper was marked Exhibit No. 6 of this date.

Mr. Mayer: The pledge which he protested against is as follows: "We, the undersigned, teachers in the public schools of the City of New York, declare our unqualified allegiance to the Government of the United States of America, and pledge ourselves by word and example to teach and impress upon our pupils the duty of loyal obedience and patriotic service as the highest ideal of American citizenship."

By Mr. Mayer:

Q. Why did you protest against that? A. I signed the pledge and signed a protest after I had signed the pledge.

Q. Why did you sign a protest? A. Because the protest was signed by Mayor John Purroy Mitchel.

Q. That is not the one? A. I signed all other loyalty pledges including the objection to the Mitchel pledge.

Q. This is one circulated by the Board of Education? A. I signed every one with the constitutional oath required by the Board of Education.

Q. Did you sign this pledge? A. I signed a protest to the pledge.

Q. Protesting against signing that pledge? A. First I signed the loyalty pledge, then I signed the protest.

Q. As I read it? A. As you read it.

Q. Then— A. Here is the distinction, as I see it. Here it is. First, I signed yes, the loyalty pledge, which was given by the Board of Education. I signed that. Then Dr. Henry R. Linzille submitted to us a protest to the loyalty pledge which I signed, therefore I signed both. I signed every loyalty pledge except Mayor Mitchel's pledge.

Mr. McIntyre: Why did you protest against the one that you signed?

A. Because the one that I signed was— You can get it, there were three pledges.

Mr. McIntyre: The one that you signed.

Q. Why did you sign that?

Mr. Smyth: Give him time.

Q. Did you sign a pledge in the words I read?

A. I will see about that. Oh, yes.

Q. You signed a pledge of that description? A. I refused to sign. I signed the pledge and the protest to that description. Is that the one?

Mr. Smyth: No, that is not the one.

By Mr. Mayer:

Q. You signed a protest against such a pledge as that? A. That is what?

Q. You refused to sign such a pledge as that? A. Yes, sir.

Q. That is what I mean? A. That is the Mayor Mitchel pledge?

Q. No, this is the pledge circulated by the Board of Education.

Mr. Smyth: Read it. Get it straightened out. You are all mixed up.

Mr. Mayer: I am not a bit mixed up.

Mr. Smyth: He is.

The Witness: There were three pledges.

Mr. Mayer: This protest reads as follows:

“Mr. A. Emerson Palmer,
Secretary of the Board of Education,
500 Park Avenue, New York City.

Sir:

The public press announces that the following loyalty pledge has been approved by the Board of Education, and is to be exacted of teachers in the public schools of New York City: ‘We, the undersigned, teachers in the public schools of the City of New York, declare our unqualified allegiance to the Government of the United States of America, and pledge ourselves by word and example to teach and impress upon our pupils the duty of loyal obedience and patriotic service as the highest ideal of American citizenship’.

Repeated reference to the pledge by members in meetings of the Board of Education indicates that it is the intention of the Board to submit the pledge to teachers in such manner as will practically compel the teachers to sign.

In anticipation of what we understand to be the purpose of the Board in this matter, we, the undersigned, teachers in the public schools of the City of New York, desire to offer the following reasons for protesting against signing any pledge under compulsion:

1. We are unable to understand why a pledge of loyalty should be exacted of teachers, unless a considerable number of them are known to have engaged in treasonable activities, or to have given utterance to treasonable statements. Otherwise, to subject 22,000 teachers to the humiliation of being coerced into signing a docu-

ment, which impliedly questions the loyalty of every one, is unwarranted and unjust.

2. We do not believe that treasonable acts or utterances have been witnessed in the schools of the City of New York. If any have been so witnessed, we submit that it is the duty of the witnesses, or of the officers of the Department of Education, to call the facts to the attention of the authorities of the United States.

3. None of the public speeches of the President of the United States, our most responsible national officer, have expressed suspicion of any group of citizens. On the contrary, his latest address to the people, under date of April 15, 1917, is a dignified appeal to a free people 'To speak, act, and serve together' in the interests of 'democracy and human rights.' Neither he nor the Congress has threatened coercion of the minds of our citizens.

4. Therefore, as teachers hitherto deemed faithful and worthy employes of the City of New York, and as citizens of the United States, we demand the same freedom from implied suspicion of wrongdoing that is guaranteed to other employes of the City, and to other citizens of our country until charges specifying acts of disloyalty have been made and proved against us.

In presenting this formal protest against an act of compulsion, we withhold nothing in our allegiance to the spirit and the principles of our American Republic."

By Mr. Mayer:

Q. Now— A. I signed that pledge.

Q. You signed that?

Mr. Smyth: The paper of protest.

The Witness: The protest, yes, sir.

Q. Now, on what ground? Now, I am asking you if you are an unqualifiedly loyal American citizen, and you hold that mental view without any reservation whatsoever, why you are not willing, as an American citizen, to sign such a pledge of loyalty? A. Yes; because of the manner in which it was presented to us; that answers the question.

Chairman Whalen: He is asking you.

The Witness: Because of the manner in which it was presented to me.

By Mr. Mayer:

Q. The manner? A. Yes, sir.

Q. Does it make any difference to you, a loyal American citizen, without any reservation or qualification, in what manner the pledge of your loyalty is presented to you? A. It does; decidedly.

Q. It does? A. I do not sign every loyalty pledge.

Q. Do you mean to tell me that you are not willing to take a pledge of loyalty to the United States without reservation or qualification whatsoever? A. I certainly am willing.

Q. You are willing to do it? A. Anything by the Government or Board of Education.

Q. Therefore, you are not willing to do it unless it is presented to you in the manner in which you think it ought to be presented to you? A. Not government pledges; I do not sign all loyalty pledges.

Q. You do not sign all loyalty pledges? A. No, sir; if you got up a pledge, for example, for Mayor Mitchel, that was what I was replying to, or referring to, Mayor Mitchel's pledge, I refused to sign that on the ground that the Board of

Education or any other governmental official with respect to us, and in proof of that—

Mr. Smyth: What is that? You have not finished anything.

Mr. McIntyre: Why not? Why not sign a pledge signed by the Mayor?

Mr. Mayer: This is submitted by the Board of Education. Why not sign it?

The Witness: I beg your pardon. This is submitted to us by First Assistant.

By Mr. Mayer:

Q. Does not that come from the Board of Education? A. I beg your pardon, if five first assistants get together as they did and present us a pledge I refused to sign it.

Q. Don't you know this is the official Board of Education pledge which teachers in these departments were asked to sign? A. I have signed every official loyalty pledge of the Board of Education.

Q. Did you sign this one? Did you sign that pledge? A. I signed this pledge.

Mr. Smyth: Then why have you not said it?

The Witness: Because there are about three pledges which I have signed, and I have signed the protest.

By Mr. Mayer:

Q. You signed the pledge and signed the protest, too? A. Yes.

Q. Then why did you sign the protest? A. Because of the manner in which they presented it.

Mr. Smyth: He signed it and then protested against being compelled to sign it?

The Witness: That is right.

By Mr. Mayer:

Q. So when it was presented to you again you

protested? A. A record of every man who did not sign the pledge or would not sign the pledge would be made to the Principal.

Mr. McIntyre: What was improper about that?

The Witness: Compulsion.

Mr. McIntyre: In other words—

Chairman Whalen: You had already signed it?

The Witness: I am referring to a pledge I have not signed, the Mitchel pledge.

By Mr. McIntyre:

Q. Why refuse? A. Because Mayor Mitchel's pledge was given to us before Wilson had declared any of his policies and I could not give pledges to policies that I did not know anything about.

Q. But war had been declared when Mayor Mitchel's pledge came out? A. No, sir.

Q. Do you think your loyalty to the United States depends upon the existence of war? A. Absolutely not. I am loyal to the United States.

Q. Then why did you hesitate to sign Mayor Mitchel's pledge? A. Because this was a private pledge.

Q. He was Mayor of the City? A. As official Mayor I signed every pledge, but as a private individual who attempted to direct the policies of Wilson prior to the war I refused, and I shall ever refuse.

Q. Do you consider that a loyal American citizen should withhold a declaration of his loyalty when the Mayor of the City of New York asked him to give it? A. Never.

Q. Why did you sign that?

Mr. Smyth: Wait a minute. I am here to protect this man. He has signed a loyalty pledge and why he is criticised for signing the loyalty pledge in one breath and then criticised because

he has not signed it, when he has signed, I do not understand.

Chairman Whalen: He is trying to find out why he protested against the loyalty pledge which he signed.

Mr. Smyth: It is absolutely irrelevant. In the protest itself is a statement of loyalty.

Mr. McIntyre: What I am trying to find out is this, why, if this gentleman is a loyal American citizen he refused to give a declaration of loyalty presented to him by the Mayor, even though the Mayor may have had no technical right to do so. I cannot conceive why he should refuse to sign it.

Mr. Smyth: What relevancy has it? He signed two pledges, one is called the pledge that the Board of Education got out, and the other is a pledge contained in the protest itself, and the constitutional oath he took.

Chairman Whalen: Mr. Smyth, the part I do not understand is why he signed the pledge required by the Board of Education and then subsequently protested against that same pledge.

Mr. McIntyre: Signing it with a string to it.

Mr. Smyth: It was not signing it with a string to it.

Chairman Whalen: No, I do not say that.

Mr. Smyth: I know you do not, but my ubiquitous friend did. If you ask me why he did it, I suppose it was because he felt grieved that his loyalty should be questioned.

Chairman Whalen: I thought perhaps you would answer.

Mr. Smyth: I will.

Chairman Whalen: Because if a man signs a pledge, and declares his loyalty and subsequently protests the pledge declaring his loyalty perhaps that is a subject for explanation.

Mr. Smyth: In the protest itself is another

pledge that he signed. When you add that to the pledge he has signed and then his constitutional oath, apparently he must have gotten confused that this protest was with reference to the Mitchel pledge. I do not know how many were gotten up.

The Witness: Five had been gotten up in our school.

Mr. Smyth: I think I went around signing as many as I could.

Chairman Whalen: You did not protest against any of them?

Mr. Smyth: What is the use?

By Mr. Mayer:

Q. Now, Mr. Schmeer? A. Yes, sir.

Q. Having got into this record facts about why it was you protested against what you had already voluntarily done, let us come to the next subject. You say that you were a very successful section officer? A. Yes, sir, up to this term.

Q. And by that you mean you were successful in advising the boys on almost any subject which they would suggest to you? Is that it? A. No.

Q. What do you mean by that then? A. For example, I had succeeded in getting the banner for our class every term, the banner by which I mean the 100% G. O. membership.

Q. I understand that, but what duties did you have with reference to the boys as section officer? A. The clerical duties?

Q. No, no. The duties, advisory duties? A. Utterly none.

Q. You had no advisory duties whatever? A. Absolutely none, in the technical sense; voluntarily I always did. I always spoke to them.

Q. That is what I mean? A. Yes.

Q. Proceed. A. I spoke about American bi-

ography, biographies of American scientists, American literature, American poetry and informal discussion.

Q. This book of contemporary literature that you got up with these sub-titles. Did you know that when that book was placed on sale in the school store it was likely to come within the view and possession of the boys who were in your section? A. No, my first term boys never buy such books. I put it—

Q. Did you know?

Mr. Smyth: You interrupted him. What were you going to say?

The Witness (continuing): As first term section officer I have never had the faintest suspicion they would buy such a book.

Mr. Mayer: He answered that way before Mr. Smyth.

Mr. Smyth: All right. It is getting pretty near midnight now.

By Mr. Mayer:

Q. You knew that that book was likely to come into the possession of some boys in that high school, did you not? A. At the suggestion of a teacher of English.

Q. You knew that if that book were on sale in that store it was likely to come into the possession of boys of that school? A. Unconsciously, yes; consciously, no; I do not think.

Q. You do not think, yet you knew a boy could go there and buy it? A. When I put it on sale?

Q. Yes. A. Undoubtedly.

Q. Yes. A. Undoubtedly; yes.

Q. You knew that the pamphlet was full of sub-titles? A. I wrote it.

Q. You knew that some of those sub-titles were of a decidedly erotic nature, did you not? A. Define erotic?

Q. Don't you know what erotic means? A. I sincerely do not.

Q. All right we won't go any further on that subject. If you don't know it, so much the worse for you. Notwithstanding the sub-titles as they are written in this book you were willing to have the high school boys in De Witt Clinton get that book in their possession?

Mr. Smyth: That is an unfair question.

Mr. Mayer: Not a bit.

A. The books recommended there are in every public library which our boys are urged to belong to.

Q. I am not talking about that. I am talking about these sub-titles, these suggestive sub-titles; you were willing to have this book with these suggestive sub-titles come into the possession of the boys of the De Witt Clinton High School?

A. Yes, sir. I object to the word suggestive.

Mr. Mayer: That is all. No, we will leave the word suggestive in.

Mr. Smyth: You have a fanciful mind; that is the only trouble.

Mr. Mayer: Oh, no. My mind is perfectly sane.

By Mr. Mayer.

Q. Is that a proper characterization of those books mentioned in your booklet? A. These books were not mentioned in the interview. The book mentioned in the interview was "The Genius."

Q. Were not those books mentioned in this contemporary literature? A. No, sir, not in the conversation.

By Mr. Greene:

Q. All the books listed in that little pamphlet were books to which the boys had access? A.

Yes, sir. They can be found in the reading room of the 42nd Street Public Library.

Q. "Psychology of Sex"—Do boys have access to it? A. Yes, sir.

By Mr. Mayer:

Q. Do you believe that all books mentioned in his "Brief Guide to Contemporary Literature" which you compiled are proper books for boys of the De Witt Clinton High School to read? A. Absolutely no.

Q. You do not? A. I do not. The "Bergson's Creative Evolution" cannot be understood until later on.

Q. Now, what do you mean by patriotism? A. Patriotism to me means Americanism. Americanism to me means democracy. Democracy to me means civic service, therefore, patriotism finally means to me service to the community.

Q. Service to the community? A. Always to the community.

Q. Does it mean service to the constituted authority? A. Always as a part of the community, we must obey the laws laid down by constituted authorities.

Q. In time of war? A. Yes, at all times.

Q. If you find a boy in your official capacity who speaks to the other boys in opposition to the war or measures taken by the Government for the support of the war, what would you do? A. You mean as a section officer?

Q. As a teacher? A. Of mathematics?

Q. A teacher of mathematics or a section officer, either? A. I would set him right immediately by logical reasoning and indicate the necessity for obedience to law and order, and I would also point out that if there were any differences relative to the law, he should first obey the law, and the law provides for amendment; I would

make that clear logically, I would not impose or knock my views into the boy.

Q. Would you teach a boy, unqualifiedly, that one of his first duties as a law-abiding citizen is patriotism? A. Unqualifiedly and emphatically.

Q. Why do you object to a man in the khaki uniform of the United States army speaking in the De Witt Clinton High School? A. I never do object; I never have objected, and possibly I never will object.

Q. Are you in favor of vigorously carrying on this war against the Imperial German Government? A. Absolutely.

Q. Do you object to military training in the high school? A. I certainly do.

Q. Why? A. For the reasons given.

Q. No, why? A. For the reasons given.

Mr. Smyth: He wants you to re-state them.

A. Militarism to a boy of fifteen or sixteen means mechanism, blind instinctive obedience. I object to instilling instinctively, the blind obedience to any person, any thing of any sort. Later on, when the boy is subject to reason, I would impress upon him the need for military training because of the need of carrying out a war, but while he is under sixteen or even in high school, if under sixteen, he should not be drilled militarily for that reason, as I have previously stated.

By Mr. Greene:

Q. Does Mr. Schmeer believe in unquestioned obedience in times of war? A. Unquestioned obedience on the part of everybody.

Q. On all soldiers? A. Yes, sir; not on the part of boys, not soldiers.

Q. Reflective obedience? A. A soldier should never give reflective obedience, he should always give instinctive obedience.

By Mr. Mayer:

Q. You believe it is the duty of a citizen who is patriotic, during war times, to give unquestioned obedience to the Government? A. I certainly do.

Q. How do you instill unquestioned obedience in the mind of the young without teaching them unquestioned obedience? A. I should teach them at a certain point, I should make it clear to him logically that the Government in carrying on the war, needs military service and needs soldiers, and consequently would emphasize the fact that the need of carrying on the Government implies a need for soldiery, and a need for soldiery implies instinctive obedience.

By Mr. McIntyre:

Q. Do you believe you can have a military organization without blind obedience to those in command? A. I do not think so.

Q. What is the objection to teaching that in the schools if the safety, welfare and security of the country imperatively demand it? A. I do not object to it being taught in the schools; I object to its being taught at so early an age.

Q. If it is necessary why should not the boys know it early as well as late? A. Because there are other types of service to the state and country.

Q. The question that Dr. Tildsley asked you was, if the people in authority said that the security of the country absolutely demanded that military instruction be had in the schools, in your opinion, would the state have a right to inaugurate it there. Do you state the state would have no right to do it? A. I disagree with you; the state has a right and the point I raised was that military training should not be introduced in the schools, not the right of a board to

introduce military training. The Board has a perfect right to introduce whatever methods it pleases, and I as a teacher will always obey the laws laid down by the Board unqualifiedly.

Q. You say that the Board would have no more right to do it? A. I disagree with you. I never made that statement.

Q. Didn't you just say that you disapproved of it because of the immaturity of these men? A. I disapprove of military training in school, but if the Board did introduce it I would certainly obey, in order to serve the State.

By Mr. Mayer:

Q. You have read through the stenographic report of the questions and answers by Dr. Tildsley and you on the first interview? A. Yes, sir, I have a copy.

Q. Do you remember making this answer to this question? "Dr. Tildsley: Will you answer this question, you as an individual? Will you tell me why Mr. John Whalen's statement is contrary to the modern spirit of true democracy?" "Mr. Schmeer: I believe very heartily and endorse all the statements and the sentiment of the entire resolution, not only as a member of the council, but as a private member of the teaching body." Did you make that answer to that question?

Mr. Smyth: That is not within the charges. I object to that as not relevant.

Mr. Mayer: You put this in evidence yourself. Did you make that answer to that question?

Chairman Whalen: You questioned him about that.

Mr. Smyth: I put that in evidence and I contend that is irrelevant because it is not within the charges.

Mr. Mayer: We are not cross examining him on anything except what was put in evidence.

Chairman Whalen: You had better let him do it.

Mr. Smyth: Exception.

By Mr. Mayer:

Q. I want to know if you made that answer to that question? A. I did not. These are extracts from the conversation, not all portions of the conversation. I said: "I disagree with you, I never committed myself in the course of the Teachers' Council."

Q. Where does this come from then; where did this paper come from? A. I requested this paper from Dr. Tildsley.

Q. Did it come from him? A. From Dr. Tildsley.

Q. Now, did you make this answer to the next question? "Dr. Tildsley: Will you tell me why there is the clause 'are detrimental to good discipline and good teaching?'" "Mr. Schner: I am not familiar with the resolution in toto but am willing to be prepared to go with all the other teachers to discuss these with Dr. Tildsley or any other authority, either officially or unofficially for the purpose of getting more accurately the sentiments of the teaching body with regard to Mr. John Whalen's assertion." A. Yes, sir.

Q. Did you make that answer? A. Yes, sir, with one qualification, however, "in toto" and put back "clause by clause."

Q. Are you not familiar with it clause by clause? A. I am not familiar with the Whalen resolution clause by clause. The rest is as you stated.

Q. Then why, if that answer to the question I just propounded to you on this paper is sub-

stantially correct, is the one immediately preceding it entirely wrong? A. Because the stenographer did not take down everything I said, and in one instance I said "Would you kindly put that down?" The stenographer objected because Dr. Tildsley objected.

Q. That is the best answer you can give? A. That is the only answer.

By Mr. Somers:

Q. In regard to these pledges which you have discussed, we understand you to say that you signed the loyalty pledge prepared by the Board of Education? A. Yes, sir.

Q. And you signed the protest against signing that pledge? A. Not that pledge; against signing the Mayor Mitchel pledge.

Q. When did you sign the protest against the pledge? A. I do not remember the exact time.

Q. Did you sign it before you signed the pledge or subsequent to the signing of it? A. Subsequent to signing the pledge.

Q. You signed the pledge first? A. I signed the pledge first.

Q. Did you sign the pledge immediately it was presented to you? A. Immediately it was presented, but I objected to the manner in which it was presented, not to the matter; that is the manner, that is the only thing; that my name would be checked off if I did not sign the pledge.

Q. I understod you to say that you taught patriotism every moment of the day to your boys, and as evidence of that you read from some newspaper statements as to commendation that had been extended to you which resolved itself into the statement, rather on your part, that you carried the banner for having had one hundred per cent. of your boys in general organization? A. Every term for six terms.

Q. You regard that as your contribution to the development of ideas of citizens of the school, the fact that your boys, one hundred per cent. of them, were members of the General Organization? A. One of the contributions.

Q. I thought you stressed the point, if I remember your testimony, that that was the particular feature which was exercised in your work, that you had one hundred per cent. of your class as members of the General Organization? A. Yes, sir.

Q. The General Organization is an organization of students? A. Yes, a democratic organization.

Q. Of students? A. Of students.

Q. It has no civic duties to perform outside of its functions that are localized and within the school? A. We perform our functions within the school.

Q. Within the school? A. Yes.

Q. No civic connection outside? A. Using civic in the non-school sense?

Q. Yes. A. In the school it is a civic organization.

Q. That is your claim for having developed traits of good citizenship, the fact that you had one hundred per cent. of your boys as members of the organization? A. Good citizens in the schools.

Q. Do you know of any other teachers in the school who have contributed one hundred per cent. of their boys to the General Organization of the school? A. Yes.

Q. Many of them? A. No, I could not say that.

Q. Is it not a fact that in the High Schools almost all of the students are members of the General Organization? A. No, sir.

Q. What percentage, for instance? A. I can only record my own experience.

Q. What is your experience? A. In my classes I have always had a hundred per cent.

Q. I am speaking of the school. A. In regard to the school?

Q. Yes. A. In most second, third, fourth

and fifth and upper terms, as the boys pass from the first term to the last term, the membership drops.

Q. Let me ask you with reference to the request which was made of you to encourage the sale of Liberty Bonds in the school. A. Yes.

Q. You say that you gave out not only one, but two blanks? A. The circular came around inviting us to give out these blanks, and I had no opportunity to meet my class in the morning, because it was in the lunch room, and then we had a special assembly and Dr. Tildsley spoke at that assembly, and I referred to that assembly in which I distributed, after reading the circulars, two blanks to each boy.

Q. What further effort did you make besides distributing the blanks to try to sell Liberty Bonds? A. Well, Dr. Tildsley—while Dr. Tildsley was talking, you mean?

Q. I mean what further effort at any time? A. I read the circular again and again, and I had the boys speak for Liberty Bonds.

Q. You had the boys what? A. Speak for the sale.

Q. Did you speak to the boys themselves and illustrate to them what the Government was trying to do through the sale of Liberty Bonds? A. In answer to questions, yes.

Q. You confined yourself to such instances as were required as the result of answers to questions from the boys? A. I would not make any hypothetical questions.

Q. Did you go ahead yourself and impress upon the boys the necessity of trying to sell Liberty Bonds? A. That is, through the circular and argument.

Q. And to answering questions they asked you? A. Yes, sir.

Mr. Smyth: That is our case.

Chairman Whalen: I would like to have you ask him, if you will, for me, if one hundred and five

teachers of the Teachers' Council were present when the resolutions were adopted; if they were present, if he will be good enough to give you the names of the members of the Council who were present.

Mr. Smyth: Yes.

The Witness: One hundred and five teachers were present. The names of the Teachers' Council are the following: Mr. Frank Pickelsky, Chairman; Charles Ham, a member, now transferred; Samuel Schmalhausen, now suspended; A. Henry Schneer, now suspended. Those were the four members of the Teachers' Council at that time of one year's standing. About that time also a certain member of the Teachers' Council had been appointed assistant principal, and Mr. Kenneth W. Wright, October 31st, was elected to substitute for Mr. Keller. About November 1st or 2nd, two members were elected from each individual annex of the DeWitt Clinton High School, of which there are two. At the time of the Whalen Resolutions there were practically four members: Mr. Pickelsky, Chairman; Mr. Charles Ham, transferred; Mr. Samuel Schmalhausen, suspended; Mr. A. Henry Schneer, suspended.

Chairman Whalen: I am not asking about those now. I am asking you, and I am asking Mr. Smyth to ask you, if these one hundred and five members of the Teachers' Council were present when the resolutions were adopted?

The Witness: There are only five members of the Teachers' Council.

Chairman Whalen: I thought you said one hundred and five?

The Witness: One hundred and five members of the teaching body.

Chairman Whalen: There are five members of the Teachers' Council?

The Witness: Elected by the entire teaching body.

Chairman Whalen: One hundred and five?

The Witness: One hundred and five of the teaching body.

Chairman Whalen: All the teaching body approved of the resolution?

The Witness: No; that were present?

Chairman Whalen: Yes. Will you give Mr. Smyth the names of the one hundred members of the teaching body who voted for the resolution?

The Witness: Except Kenneth W. Wright and two others, the names of which—

Chairman Whalen: Every other teacher in the school except those?

The Witness: Of the one hundred and five who were present?

Chairman Whalen: Who were they?

The Witness: The names of the one hundred and four?

Mr. Smyth: That is what he wants.

Chairman Whalen: Give them to him.

The Witness: Right now?

Chairman Whalen: You may send them to me by to-morrow morning; will you do that? How many teachers are there?

The Witness: About one hundred and fifty-eight.

Chairman Whalen: Will you give to Mr. Smyth the names?

The Witness: Yes, sir.

Chairman Whalen: Now, do you want to discuss before the committee the evidence; do you want to sum up?

Mr. Smyth: I would not attempt to sum up at this late hour, with the continuous session we have had ever since three o'clock this afternoon. I do not think I could do the committee any good, or myself, or any one else any good. It seems to me

we ought to do it some other time or else waive summing up.

Mr. Mayer: I am perfectly willing to waive it.

Mr. McIntyre: I will waive it.

Chairman Whalen: Then you will submit it as it is to us?

Mr. Smyth: Submit it as it is. I rely on my motion to dismiss, which I now renew on all the evidence. It comes within none of the subdivisions or classifications of the by-laws which I have referred to, and that the matters testified to or the matters contained in the charges are not the subjects of charges for the purpose of dismissal or discipline of the teachers, and, further, that the charges as specified have not been borne out by the evidence. I suppose the by-laws are in evidence?

Chairman Whalen: The reason I refer to it now, was, that in the beginning of the trial I said that at the close of the trial if you chose to give us your view on the law of the case we would be glad to hear you. It is only for that reason that I call it to your attention. I know you must be tired after such a long trial. The by-laws have been submitted to the Committee for identification, and if we admit them we will let you know, and if we overrule your offer we will give you an exception.

Mr. Winthrop: Is it your idea that the new Educational Law takes the place of the by-laws or the by-laws are still in force?

Mr. Smyth: As I understand it the new Educational Law takes effect to the extent of providing for the by-laws to be amended, and until the by-laws are amended those by-laws are still in force.

Mr. Winthrop: Your point is that these by-laws are still in force in spite of the new Educational Law?

Mr. Smyth: That is true.

Mr. Winthrop: That is your point?

Mr. Smyth: Yes.

Mr. Somers: In regard to that, the law is very explicit. I cannot put my hand on the section, but it provides that a teacher may be removed after a hearing for cause.

Mr. Winthrop: The point that Mr. Smyth makes, is that the by-laws specify the grounds upon which you can remove a teacher.

Mr. McIntyre: We must have a by-law which is not inconsistent with the statute. Furthermore, let us assume that the by-laws is in effect, and all these things come under the head of gross misconduct, refusing to serve the United States in this great crisis, the greatest crisis in the history of the world.

Mr. Smyth: May I say one word in that respect. There is not any evidence from the prosecution of any act on the part of any of these teachers; there has been nothing but an attempt to get up a hypothetical case and ask their opinion on a hypothesis. There has been no evidence of any kind that in the discharge of their duties any one of these teachers were other than loyal, honest, faithful servants to this community. It is something comparable to the old Salem witchcraft trials, that a person who is supposed to have views that were not in cognizance with the views of the community, is put on trial and asked supposititious questions, not as to what they had done, not as to what their duty requires them to do, but taking a case that is not in point at all, what would you then do; in other words, you could not get a better example of trying to set a trap to catch these persons, get these persons into making admissions outside of anything they have done, than we have had here exhibited before us in the testimony of Dr. Tildsley and Mr.

Paul, and the other gentlemen who have testified. So far as the character of these men is concerned, everybody seems to unite that they bear unblemished reputations as teachers and as gentlemen. They have done nothing. We may disagree with some of their views, so far as statements of philosophy are concerned, but there is nothing to show that they are unfit, from this evidence, and certainly what they have said is absolutely incognizant with our ideas of loyalty and patriotism. If these persons had gone on the stand and admitted that their idea was that patriotism should not be taught in the schools, that they were against it, if they were told to, that would be one thing. But you have had them before you. You have heard them cross examined at great length, and they have told you that so far as their conduct towards their scholars was concerned, if the subjects were to come up they would be loyal. Merely because in an inquisition carried on by Dr. Tildsley under circumstances which it seems to me certainly smack of prejudice, and are founded on something else other than specific disloyalty, they have managed to extract here and there phrases and statements, apparently through faulty recollection, evidence of which Dr. Tildsley gave us on the stand, of distorted meaning, it is hardly a fair thing to say that these gentlemen are to be deprived of their liberty and are to go forth stigmatized in this world at this critical time as disloyal subjects, the worst punishment that can be meted out. If those men were on trial before a jury in an ordinary court of record there is not any judge, and I know Mr. Whalen will agree with me, who would permit that kind of testimony to be received to blacken the reputations of these men.

If, for instance, Mr. Schneer in class had received this paper written by Hyman Herman and has said, "Well, boys, you have heard this statement, I do not disagree with it," and that utterance of his had gone forward to the others, then you would have something to fasten on; then you would have just grounds for saying that "that man is unfit to be a teacher because he has given us evidence of it," but nothing of that kind occurred.

We find that he did not even know about the statement that Herman had made until some two weeks afterwards; when he was shown the statement, not in the school room, not in the presence of the boys, who were to be taught, but in the inquisitorial chamber; questioned, and made to say things, according to the interpretation of Dr. Tildsley, which are at variance with the statement that he has annotated on the paper itself. The whole thing is hypothetical. There is not anything real in any of these charges. To say a teacher is to be dismissed on a hypothesis of that kind, it seems to me is to give countenance to something un-American, unpatriotic and opposed to all our institutions and our ideas of what a trial should be, which only seeks to deal out fairness and not deal out trickery, and to entrap a man.

Mr. McIntyre: May it please the Committee with regard to that: Some of these cases do present issues of fact.

Mr. McIntyre (continuing).

Now, the only way that you can decide these issues of fact in favor of these teachers is by assuming that Dr. Tildsley, Mr. Anthony and Mr. Paul have entered into the dirtiest kind of a conspiracy against these people without any reason, without any motive that I can conceive. I cannot conceive how you can come to any con-

clusion other than the fact that Mr. Tildsley and Mr. Anthony and Mr. Paul are telling the truth.

You have heard them and you have heard the witnesses, and we are going to let you decide the issues of fact. But remember this: You cannot decide against Mr. Tildsley and the others without coming to the conclusion that they hatched a conspiracy against these men. I cannot conceive why they should have done that. Therefore, I feel that you must decide the issues of fact against these defendants.

Now, having decided the issues of fact against them it will become apparent that although they were presented in many instances with hypothetical questions, hypothetical situations, it was only through these hypothetical questions that their attitude toward the United States in the present conflict with the German Government could be ascertained. It could not be done any other way. As far as I am aware the course of study did not permit it. There was not anything tangible that afforded the educational officers the means or the opportunity of finding out just where these people stood. The only way it could be found out was by presenting these hypothetical situations and ascertaining their attitude from the way they would act in these given situations, whether or not they were friendly or unfriendly to the United States Government in this the greatest of all crises.

Now, having ascertained from these answers that they were hostile to the Government, it was a plain violation of the duty which they owed to the State, because in point of fact they do receive their livelihood from the State, and in these insidious ways seeking to undermine the Constitution of the State, and the Constitution of the State requires every public official to take an oath that he will support the State Constitu-

tion and the Federal Constitution. Therefore, if these three gentlemen made these statements which showed they were not in sympathy with the United States Government in this war against Germany, that they were, we might say, disloyal, I think some of the testimony goes that far, they plainly disqualified themselves longer to continue as public school teachers because a public school teacher owes an affirmative and positive duty to work for the State; not an attitude of even passivity, but labors under the obligation of taking affirmative steps to protect the interests of the State and Federal Government. You cannot get away from that. The legal proposition is as plain as can be.

Chairman Whalen: We want to thank you gentlemen very much, indeed, for the very courteous way in which you have tried these cases. I feel very grateful to the Corporation Counsel also, and your viewpoints, which you have just given us, are going to help our Committee in the determination of this case.

We understand now that the cases have been submitted to us and we will take them under advisement and render a decision as soon as possible.

Whereupon, at 12:23 o'clock A. M., on the morning of December 4th, 1917, the hearing in the above-entitled cases was concluded.

